

STATE OF OHIO

Plaintiff

VS.

VON CLARK DAVIS

Defendant

IMAGED

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JAN 19 1989

EDWARD S. ROBB, JR.

: : CLERK :

CASE NO. CR83-12-0614

STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS
(Bruewer, P.J.; Moser,
and Stitsinger, J.J.)

MOTION

Now comes John F. Holcomb, Prosecuting Attorney, and requests that the trial court schedule a date for sentencing hearing before the three-judge panel as mandated by the Ohio Supreme Court's decision in State v. Davis (1988), 38 Ohio St. 3d 361, inasmuch as the Supreme Court of the United States has denied defendant's petition for a writ of certiorari, by order entered January 17, 1989, (copy of notice of order attached).

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

By Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
216 Society Bank Building
Hamilton, Ohio 45012-0515
Telephone: (513)887-3474

PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion was served by U.S. ordinary mail to John A. Garretson, Michael D. Shanks, and Timothy R. Evans, Attorneys for Defendant, at their respective offices, this 19th day of January, 1989.

Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

125
OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

STATE OF OHIO

IMAGED

CASE NO. CR83-12-0614

Plaintiff

STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS

VS.

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

VON CLARK DAVIS

Defendant

FEB 6 1989

ENTRY

EDWARD S. ROBB, JR.
CLERK

It appearing to the Court that the Mandate of the Supreme Court of Ohio herein ordered that the judgment of conviction herein was affirmed but the death sentence was reversed and the cause was remanded "for a resentencing hearing at which the state may seek whatever punishment is lawful, including, but not limited to the death sentence," in accordance with the decision in State v. Davis (1988), 38 Ohio St. 3d 361, 373,

IT IS THEREFORE ORDERED that a pretrial hearing shall be heard in the courtroom of JUDGE HENRY J. BRUEWER on February 24th, 1989, at 8:45 o'clock a.m., before Judge Bruwer, Judge William R. Stitsinger and Judge John R. Moser.

APPROVED AS TO FORM:

E N T E R

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

H. J. Bruwer
JUDGE HENRY J. BRUEWER

126

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

J0036P663

Form OPD-E-202

Barrett Publishers, Springfield, Ohio

APPLICATION, ENTRY AND CERTIFICATION

FOR ASSIGNED COUNSEL FEES

IMAGED

In the Common Pleas Court of Butler County
 STATE OF OHIO
 CITY OF Hamilton

Plaintiff
 vs.

FILED in Common Pleas Court
 BUTLER COUNTY, OHIO

CASE NO. CR83-12-0614VON CLARK DAVIS

Defendant

FEB 10 1989
 EDWARD S. ROBB, JR.
 APPLICATION

The undersigned having been previously appointed counsel for the Defendant moves this Court for an order approving payment of fees and expenses as indicated below and in the attached itemized statement, pursuant to section 2941.51 and 120.33 of the Ohio Revised Code.

Date of Appointment: 2/10/84

Hours Worked: In Court

Out of Court

Legal Fees: \$ 2,500.00 - 1250.00Expenses (if any): \$ 170.25 - 136.00Total: \$ 2,670.25 - 1386.00

Disposition

O. R. C. Charge Section Number and Name:

Yes No

a) <u>Agg. Murder w. Spec.</u>	<u>Pleaded Guilty to Indictment</u>	<u> </u>	<u>X</u>
b) <u>2903.01</u>	<u>Pleaded Guilty to Lesser Charge</u>	<u> </u>	<u>X</u>
c) <u>2929.04 (A-5)</u>	<u>Went to Trial</u>	<u>X</u>	<u> </u>
d) <u> </u>	<u>Results guilty - death penalty</u>	<u> </u>	<u> </u>

OFFENSE CLASSIFICATION (Circle Appropriate Classification For Each Charge)

a) AGG F1 AGG F2 AGG F3 F1 F2 F3 F4 M1 M2 M3 M4 MM
b) AGG F1 AGG F2 AGG F3 F1 F2 F3 F4 M1 M2 M3 M4 MM
c) AGG F1 AGG F2 AGG F3 F1 F2 F3 F4 M1 M2 M3 M4 MM
d) AGG F1 AGG F2 AGG F3 F1 F2 F3 F4 M1 M2 M3 M4 MM

 Mike Shanks was employed at
 Holbrook & Jonson Law Firm,
 315 S. Monument Avenue,
 Hamilton, OH 45011, at the
 time of this case.

Signature

304 N. Second Street
Hamilton, OH 45011

Name and Address

Michael D. Shanks

Social Security Number:

ENTRY

This Court finds that counsel performed the legal services set forth on the attached itemized Statement; and that the fees and expenses, set forth on said Statement are reasonable, and are in accordance with the resolution of the Board of County Commissioners of Butler County, Ohio, relating to payment of assigned counsel.

IT IS THEREFORE, ORDERED that fees and expenses in the amount of \$ 1386.00 be, and are hereby approved. It is further ordered that the said amount be, and hereby is, certified by the court to the County Auditor for payment.

Judge

H. J. Brewer
H. J. Brewer

J00775032

IMAGED

Check Date: _____

Form Prescribed by Ohio Public Defender Commission

DATE	ACTIVITY	TOTAL TIME
	EXPENSES	
4/12/84	Photo expense	\$ 57.50
4/17/84	Witness fee to Elbert Avery	19.00
5/7/84	Transcript expense	72.00
5/9/84	Mileage expense to investigator	4.50
5/11/84	Mileage expense to investigator	3.75
5/16/84	Copy expense	13.50
	TOTAL EXPENSES	\$ 170.25

Von Clark Davis
Party Represented
CR83-12-0614
Case No.
Bruewer, Moser & Stitsinger
Judge
2/10/84
Date Assigned

January 12, 1989

Date _____

VON CLARK DAVIS v. WARDEN
CASE NO. 2:16-cv-00495
APPENDIX - Page 1076

The County Auditor in executing this certification attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or the Auditor of State which reveals unallowable or excessive costs, will result in future adjustment against reimbursement or repayment of audit exceptions to the Ohio Public Defender Commission.

IMAGED

County Number: _____

Check Number: _____

Check Date: _____

County Auditor _____

Form Prescribed by Ohio Public Defender Commission

ASSIGNED COUNSEL ITEMIZED STATEMENT

DATE	ACTIVITY	TOTAL TIME
4/18/84	Trial preparation and meet with Judge	3 1/2 hours
4/19/84	Hearing	1 hour
4/27/84	Research	1 hour
5/1/84	Meeting with co-counsel and Judge	1 hour
5/2/84	Hearing on motions	2 hours
5/3/84	Trial Preparation	2 hours
5/7/84	Research and meeting with client	4 hours
5/8/84	Hearing; trial preparation	3 hours
5/9/84	Trial	10 hours
5/10/84	Trial	10 hours
5/11/84	Trial	6 hours
5/14/84	Hearing - Re: Sentencing date & research	2 hours
5/25/84	Hearing preparation	1 hour
5/26/84	Sentencing hearing	6 hours
5/31/84	Sentencing hearing	1 hour
	TOTAL HOURS	86.5
	EXPENSES ON ATTACHED SHEET	

I hereby affirm the above is a true and accurate account of the time spent in the preparation of this matter.

Von Clark Davis

Party Represented

CR83-12-0614

Case No.

Moser, Bruewer & Stitsinger

Judge

2/10/84

Date Assigned

Signature of Counsel

January 12, 1989

Date

J0027P034

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

IMAGED

STATE OF OHIO : CASE NO.: CR83 12 0614
Plaintiff : MOTION TO EXTEND TIME TO FILE
PRETRIAL MOTIONS AND MOTION
vs. : TO CONTINUE SENTENCING/
MITIGATION HEARING

VON CLARK DAVIS

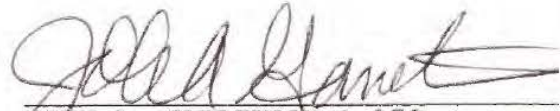
Defendant

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

MAY 9 1989

EDWARD S. ROBB, JR.
CLERK

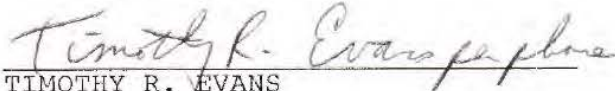
Now comes the defendant, Von Clark Davis, by and through his respective counsel and moves the Court for a continuance of the mitigation hearing presently set for May 19, 1989 at 9:00 a.m. for the reasons set forth in the attached memorandum and additionally moves the Court to extend the time within which he may file various pretrial motions.



JOHN A. GARRETSON A-173
616 Dayton St., P.O. Box 1166
Hamilton, Ohio 45012
(513) 863-6600



MICHAEL SHANKS
304 North Second Street
Hamilton, Ohio 45011
(513) 863-2112



TIMOTHY R. EVANS
P.O. Box 687
Hamilton, Ohio 45012
(513) 868-7600

Attorneys for Defendant

GARRETSON LAW OFFICES
ATTORNEYS AND
COUNSELORS AT LAW
616 DAYTON STREET
P.O. BOX 1166
HAMILTON, OHIO 45012
(513) 863-6600

IMAGE

MEMORANDUM

It is respectfully submitted that inasmuch as the defendant is incarcerated at Lucasville it is difficult for the defendant's counsel to meet with him at a time convenient to defendant's counsel and for defendant's counsel to obtain expert testimony and evaluation of the defendant given the geographic constraints. Additionally, lead counsel Michael Shanks is lead counsel in the case of State of Ohio v. John C. Knuckles having been appointed by this Court to represent said defendant. It is respectfully requested by all counsel for the defendant that additional time is needed for preparation.

The defendant waives any time requirements within which the mitigation hearing must be held and it is submitted to the Court that there is no prejudice to any party herein by granting a continuance of the mitigation hearing inasmuch as the defendant remains incarcerated at Lucasville and shall remain so incarcerated until this matter is heard.

Defendant's counsel additionally requests additional time to submit various pretrial motions and memorandums inasmuch as defendant's counsel due to the press of various trial commitments needs additional time within which to prepare said motions and defendant's counsel inasmuch as they were appointed in this matter and inasmuch as the defendant was represented by the Ohio Public Defender's Office as co-counsel in front of the Supreme Court of the United States, needs additional time to meet with the Ohio Public Defender's Office to properly prepare and plan for the mitigation hearing herein.

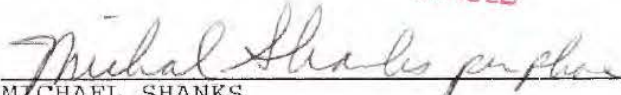
Respectfully requested,

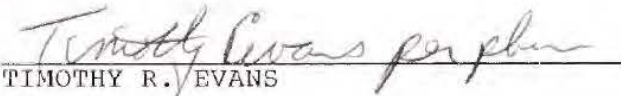


JOHN A. GARRETSON

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(513) 853-6600

IMAGED


MICHAEL SHANKS


TIMOTHY R. EVANS


ENTRY

The Court upon motion of the defendant and upon a showing of good cause, hereby grants the defendant's motion to continue this matter which shall be reset by the Assignment Commissioner in approximately 60 days from May 19. It is specifically found that the defendant waives any time requirements within which this matter must be heard.

JUDGE

CERTIFICATE OF SERVICE

I hereby certify that copy of the foregoing was mailed to the Prosecuting Attorney's Office, 216 Society Bank Bldg., P.O. Box 515, Hamilton, Ohio 45012, on the date the same was filed.


JOHN A. GARRETSON

GARRETSON LAW OFFICES
ATTORNEYS AND
COUNSELORS AT LAW
616 DAYTON STREET
P.O. BOX 1166
HAMILTON, OHIO 45012

(513) 863-6600

IN THE COURT OF COMMON PLEAS, BUTLER COUNTY, OHIO

The State of Ohio

Plaintiff

vs.

Von Clark Davis

Defendant

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

IMAGED

JUN 5 1989

EDWARD S. ROBB, JR.

CLERK

Case No. CR83-12-0614

Mitigation Hearing

has been set for hearing

on August 4 at 9:00 a.m.

before the Honorable John R. Moser, William R. Stitsinger and
Henry J. Bruewer.

Copies mailed to:

John Garretson
Michael Shanks
Tim Evans
Dan Eichel

on June 5, 1989.

COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO

*

Case No.: CR 83-12-0614

Plaintiff

IMAGED

FILED

vs.

'89 JUN 28 PM 3 15 FILED in Common Pleas Court
VON CLARK DAVIS BUTLER COUNTY, OHIO E N T R Y
CLERK OF COURTS
EDWARD S. ROBB, Defendant JUN 28 1989
EDWARD S. ROBB, JR.
CLERK

* * * * *

It appearing to the Court that the Defendant, Von Clark Davis, is indigent and without funds or assets necessary to retain counsel on his behalf,

IT IS THEREFORE ORDERED, that John A. Garretson, Michael D. Shanks, and Timothy R. Evans, be and hereby are appointed as counsel for Defendant, Von Clark Davis, until further order of this Court.

"Enter"

Judge

BRESSLER, SHANKS
& GEDLING CO., L.P.A.
ATTORNEYS AT LAW
304 NORTH SECOND STREET
HAMILTON, OHIO 45011

513-863-2112

U00421214

IMAGED

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO

* Case No. CR83-12-0614

Plaintiff **FILED In Common Pleas Court**
BUTLER COUNTY, OHIO

vs.

FILED

VON

CLARK DAVIS

JUN 29 1989

* WITHDRAW OF JURY WAIVER

CLERK OF COURTS
EDWARD S. ROBB, JR.

CLERK

Now comes the Defendant, Von Clark Davis, and withdraws his previous Jury Waiver.

MEMORANDUM

Ohio Rule of Criminal Procedure 23A allows a Defendant, before commencement of the trial, to waive his right to a trial by jury. Defendant in this case did so, however, the case was remanded for a second trial, i.e., the penalty phase.

In State vs. Grimsley 3 O.A. 3rd 265, the Court of Appeals of Hamilton County held that pursuant to Ohio Revised Code 2945.05, a Defendant may, at any time prior to trial, withdraw his Jury Waiver and it is error for Court, not to so allow.

Therefore, Defendant submits that he is entitled to withdraw his Jury Waiver, and by this document a waiver, withdraws his.

HOLBROCK & JONSON
LAW FIRM
HOLBROCK-JONSON
BUILDING
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P. O. BOX 667
HAMILTON, OHIO 45012

IMAGED

Respectfully submitted,

HOLBROCK & JONSON LAW FIRM
Attorneys for Defendant
315 S. Monument Avenue
Hamilton, Ohio 45011
Telephone: (513) 868-7600

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

JUN 29 1989

EDWARD S. ROBB, JR.
CLERK

Timothy R. Evans

By: Timothy R. Evans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Withdraw of Jury Waiver was forwarded to Mr. John Holcomb, Prosecuting Attorney, 311 Rentschler Building, Hamilton, Ohio 45011, this 29th day of June, 1989.

Timothy R. Evans

By: Timothy R. Evans

HOLBROCK & JONSON
LAW FIRM
HOLBROCK-JONSON
BUILDING
315 S. MONUMENT AVENUE
P. O. BOX 687
HAMILTON, OHIO 45012

99-0252

IMAGED

FILED

MAR 05 1999

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIOIN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

90-2524

STATE OF OHIO

'89 JUN 29 PM 3 16 Case No. CR83-12-0614

Plaintiff,

CLERK OF COURTS

EDWARD S. ROBB, JR.

MOTION

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUN 29 1989

EDWARD S. ROBB, JR.

*****CLERK*****

FILED

MAR 05 1991

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

VON CLARK DAVIS

Defendant.

Now comes the Defendant, Von Clark Davis, and respectfully moves this Court to sentence him to life imprisonment, on the basis that to sentence him to death would deny him both equal protection and would constitute double jeopardy, and further, in that it allows the imposition of the death penalty in violation of Article 1, sections 9 and 10, clause 1, and the 6th, 8th and 14th amendment.

MEMORANDUM

The Defendant submits that, because of State vs. Pennix 32 O.S. 369, he is denied equal protection if he were to be sentenced to death. Defendant, further submits that to resentence him to death would constitute double jeopardy. Furthermore, if he were sentenced to death it would be an ex post facto application of the Ohio Statutes, in violation of Article 1, sections 9 and 10, clause 1 to the United States Constitution. In State vs. Davis 38 O.S. 3rd 361, Judge Douglas commented that even though the same three Judges are available, there is no doubt that they are not in the same posture as they were at the original time. Justice Douglas noted, that while

HOLBROCK & JONSON
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315 S. MONUMENT AVENUE
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HAMILTON, OHIO 45012

IMAGED

all three Judges might be available in this case, and they are not "in the same posture" and furthermore, if in the next case, one of the three Judges are not available, this would work to deny this Defendant equal protection.

Therefore, Defendant submits that to resentence him to death would violate equal protection, would both be a bill of attainder and an ex post facto application of the law, and would constitute double jeopardy.

Respectfully submitted,

HOLBROCK & JONSON LAW FIRM
Attorneys for Defendant
315 S. Monument Avenue
Hamilton, Ohio 45011
Telephone: (513) 868-7600

FILED In Common Pleas Court
BUTLER COUNTY, OHIO
JUN 29 1989
EDWARD S. ROBB, JR.
CLERK

By: Timothy R. Evans
Timothy R. Evans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was forwarded by ordinary U.S. Mail Service to Mr. John Holcomb, Prosecuting Attorney, 311 Rentschler Building, Hamilton, Ohio 45011, this 29th day of June, 1989.

By: Timothy R. Evans
Timothy R. Evans

HOLBROCK & JONSON
LAW FIRM
HOLBROCK-JONSON
BUILDING
315 S. MONUMENT AVENUE
P. O. BOX 687
HAMILTON, OHIO 45012

IN THE COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO

Plaintiff,

vs.

VON CLARK DAVIS

Defendant.

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUN 29 1989

EDWARD S. ROBB, JR.
CLERK

FILED

*89 JUN 29 PM 3 16

* Case No. CR83-12-0614

* CLERK OF COURTS

* EDWARD S. ROBB, JR.

* MOTION TO WITHDRAW THE JURY

* WAIVER

Now comes the Defendant, Von Clark Davis, and respectfully moves this Court to allow him to withdraw his jury waiver, for the reason that it was not a knowing and voluntary waiver.

MEMORANDUM

The Defendant's Jury Waiver was not knowing, intelligent and voluntary. In State vs. Rupert 54 O.S. 2nd 263, the Ohio Supreme Court held that where a Defendant was advised that it required all three Judges to convict him, and in fact, it turned out that the advice was erroneous and it took only a majority of two Judges to convict him. The U.S. Supreme Court held that his waiver was not knowing, intelligent and voluntary.

State vs. Pennix 32 O.S. 3rd 369, held that if there was error in the penalty phase of the trial, that the Defendant must, on remand, be sentenced to life. Thereafter, in State vs. Davis 38 O.S. 3rd 361, the case at hand, the Court, though finding error at the penalty stage, made a distinction between a panel and a jury and allowed the Petitioner to be resentenced to death. Because of this distinction, the Petitioner's jury

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IMAGED

waiver was not knowing, intelligent and voluntary, since he did not know at the time of the waiver that if there was error in the penalty phase, he could be resentenced to death only if he was tried by a three judge panel.

Also, Petitioners Jury Waiver was not knowing, intelligent and voluntary because, as this Court will remember, Petitioner previously asked to sever the weapons under disability count and waived his right to a jury only when the Court denied the same.

Therefore, Petitioner moves this Court to allow him to withdraw his Jury Waiver

FILED In Common Pleas Court
BUTLER COUNTY, OHIO
JUN 29 1989
EDWARD S. ROBB, JR.
CLERK

Respectfully submitted,

HOLBROCK & JONSON LAW FIRM
Attorneys for Defendant
315 S. Monument Avenue
Hamilton, Ohio 45011
Telephone: (513) 868-7600

By: Timothy R. Evans
Timothy R. Evans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was forwarded by ordinary U.S. Mail Service to Mr. John Holcomb, Prosecuting Attorney, 311 Rentschler Building, Hamilton, Ohio 45011, this 29th day of June, 1989.

By: Timothy R. Evans
Timothy R. Evans

HOLBROCK & JONSON
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HAMILTON, OHIO 45012

COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO

Plaintiff

vs.

VON CLARK DAVIS

Defendant

CLERK OF COURTS

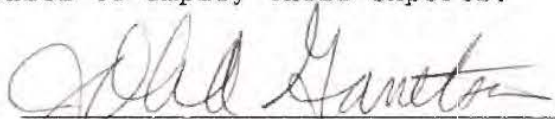
FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUL 18 1989

EDWARD S. ROBB, JR.
CLERKMOTION FOR FURTHER PSYCHO-
LOGICAL EVALUATIONS, APPOINT-
MENT OF A SOCIAL WORKER
TO PREPARE A SOCIAL HISTORY
AND FOR PAYMENT OF EXTRA-
ORDINARY EXPENSES FOR SAID
EXPERTS

: : : : : :

Now comes the defendant, Von Clark Davis, by and through counsel, and moves the Court to appoint Roger Fisher of the Butler County Forensic Center to perform an additional psychological evaluation in this case and to appoint an additional psychologist to perform an independent psychological evaluation in this case and moves the Court to appoint a social worker to prepare a social history in this case for the use of the psychologist and for the Court's use in determining sentence in this matter. Defendant further moves the Court to approve extraordinary expenses to employ these experts.



JOHN A. GARRETSON A-173
A Legal Professional Association
616 Dayton Street, P. O. Box 1166
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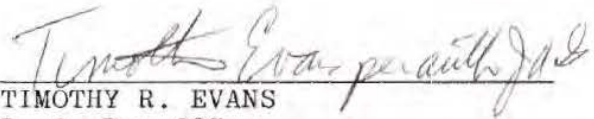
MICHAEL SHANKS
304 North Second Street
Hamilton, Ohio 45011
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GARRETSON LAW OFFICES

ATTORNEYS AND
COUNSELORS AT LAW
616 DAYTON STREET
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IMAGED

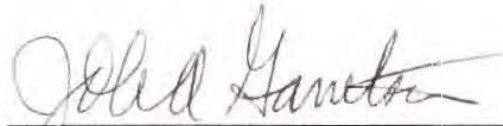


TIMOTHY R. EVANS
P. O. Box 687
Hamilton, Ohio 45012
Telephone: (513) 868-7600

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U. S. Mail to John F. Holcomb, Prosecuting Attorney, P. O. Box 515, Hamilton, Ohio 45012, on the date the same was filed.



JOHN A. GARRETSON
Attorney for Defendant

GARRETSON LAW OFFICES
ATTORNEYS AND
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516 DAYTON STREET
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COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

FILED

STATE OF OHIO

Plaintiff

CASE NO. 83112 0614

vs.

VON CLARK DAVIS

Defendant

CLERK OF COURTS

**MOTION TO PROHIBIT THREE-
JUDGE PANEL FROM RESENTENCING
TO DEATH AND MOTION TO
DISQUALIFY PANEL**

: : : : : :

Now comes the defendant, Von Clark Davis, by and through counsel, Michael Shanks, Timothy R. Evans, and John A. Garretson, and moves the Court as follows:

1. The defendant respectfully moves the Court to prohibit any consideration of the death penalty being reinstituted in this case. Specifically, the defendant incorporates by reference any and all of the arguments with respect to resentencing and the unconstitutionality of the defendant being resentenced to a sentence of death after error having been committed in the sentencing phase of his trial, as was submitted as authority to the Supreme Court of United States on a Petition for Certiorari. (Certiorari denied on other grounds. Will be submitted.) Additionally the defendant directs the Court's attention to the dissent written in the Ohio Supreme Court case by Justice Douglas and cites the authority contained therein. It is respectfully submitted that, in fact, even if the same three persons remain on the Three-Judge Panel, they are not "the same Three-Judge Panel". Specifically, after the period of nearly five years has elapsed,

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IMAGED

the Three-Judge Panel does not come to this resentencing with the same state of mind, knowledge of this case, nor disposition to hear this matter as when the case was originally heard. Beyond the fact that, based upon the decision of the Ohio Supreme Court in State v. Penix (1987), 32 O. St. 3d. 369, defendant, Davis, is being denied the equal protection of the law argument in considering the death penalty in resentencing a defendant who elected to have his case heard by a Three-Judge Panel (and that unequal protection argument is set forth separately by separate motion), the defendant, Davis, in this case is by statute entitled to have his case sentenced by the same Three-Judge Panel, and although the persons themselves may be the same in name they are not the same panel by virtue of the five-year lapse of time as well as the change of circumstance of all parties involved. For the Court to consider the death penalty as one of the sentencing options in this case violates the defendant's constitutional right to equal protection of the law and violates the statute, specifically Ohio Revised Code Sections 2929.022(B), 2929.03(C)(2)(a), 2929.03(D)(3), and 2929.03(F), wherein the statute refers to a particular panel of three Judges as opposed to merely a panel of three Judges, and, in this case, the Court is not comprised of the same panel of three Judges.

2. Defendant respectfully submits that inasmuch as the presiding Judge originally in his case and the presiding Judge of the Three-Judge Panel at that time was the Honorable Judge Henry J. Bruewer, who is now the Probate Judge of Butler

GARRETSON LAW OFFICES
ATTORNEYS AND
COUNSELORS AT LAW
616 DAYTON STREET
P.O. BOX 1166
HAMILTON, OHIO 45012

(513) 863-6600

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County and no longer on the trial division of the Butler County Common Pleas Court, that the same panel as originally heard his case cannot be assigned within the trial division of the Common Pleas Court and, therefore, since the same panel is not available to be assigned within the trial division of the Butler County Common Pleas Court, that he cannot be resentenced properly to the sentence of death by a different panel and, therefore, the sentence of death should not be considered as a sentencing option in this case.



JOHN A. GARRETSON A-173
A Legal Professional Association
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Hamilton, Ohio 45012
Telephone: (513) 863-6600



MICHAEL SHANKS
304 North Second Street
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TIMOTHY R. EVANS
P. O. Box 687
Hamilton, Ohio 45012
Telephone: (513) 868-7600

ATTORNEYS FOR DEFENDANT

GARRETSON LAW OFFICES
ATTORNEYS AND
COUNSELORS AT LAW
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HAMILTON, OHIO 45012
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent by regular U. S. Mail to John F. Holcomb, Prosecuting Attorney, P. O. Box 515, Hamilton, Ohio 45012, on the date the same was filed.



JOHN A. GARRETSON
Attorney for Defendant

GARRETSON LAW OFFICES
ATTORNEYS AND
COUNSELORS AT LAW
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P.O. BOX 1166
HAMILTON, OHIO 45012

(513) 863-6600

- 4 -

CC 7-28-89 9/45

Clk. 312

BARNETT BROS. PUBLISHERS, SPRINGFIELD, OHIO

Precipe for Subpena--In State Case

IMAGED

THE STATE OF OHIO

FILED
88 JUL 20 AM 10 24

No. CR 83 12 0614

VON CLARK DAVIS

CLERK OF COURTS
EDWARD S. ROBB, JR.

COMMON PLEAS COURT

Defendant

To the Clerk:—Issued subpena for

		RESIDENCE
1	Capt. Oscar McGraw, Unit Manager, Death Row	Southern Ohio Correctional Facility
2	Sgt. Gordy Pullman, Unit Counselor, Death Row	P. O. Box 45699, Lucasville, OH 45699
3	Herb Wendler, Social Worker, Death Row	Same
4		Same
5		
6		
7		
8		
9		
10		

all certified mail

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUL 20 1989

EDWARD S. ROBB, JR.
CLERK

to appear as witnesses in above named case, on August 8 A. D. 1989,

at 9:00 o'clock A. M. Required on behalf of the defendant
JOHN A. GARRETSON
Att'y for the Defendant

No.

Crim. Doc. Page

COMMON PLEAS COURT

..... County, O.

THE STATE OF OHIO

Plaintiff

vs.

Defendant

PRECIPE FOR SUBPENA

For Witnesses

Filed 19

Clerk

By Deputy

BARNETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

BAYBROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

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 Canary - Attorney

IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

IMAGED

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Herb Wendler, Social Worker, Death Row, Southern Ohio Correctional Facility,
 P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,

on the 8th day of August, 19 89 at 9:00 o'clock A M (Courtroom # _____)

to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street

Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by

Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

2/4/85

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

vs

Von Clark Davis

SUBPOENA
 CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Capt. Oscar McGraw, Unit Manager, Death Row, Southern Ohio
 Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County
 on the 8th day of August, 19 89 at 9:00 o'clock A M (Courtroom #)
 to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89
John A. Garretson Attorney

Attorney for Defendant
616 Dayton Street
Hamilton Ohio 45011
 Attorney Address and Phone

Edward S. Robb Jr.
 Clerk of Courts
C. Carpenter
 by
 Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

IMAGED Case No. CR83 12 0614

VS

Von Clark Davis

SUBPOENA
 CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Sgt. Gordy Pullman, Unit Counselor, Death Row, Southern Ohio
 Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,
 on the 8th day of August, 19 89 at 9:00 o'clock A M (Courtroom #)
 to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89
John A. Garretson Attorney

Attorney for Defendant
616 Dayton Street
Hamilton Ohio 45011
 Attorney Address and Phone

Edward S. Robb Jr.
 Clerk of Courts
C. Carpenter
 by
 Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

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SUBPOENA (including command to produce document or object)

IMAGED

DISTRIBUTION
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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

VS

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Capt. Oscar McGraw, Unit Manager, Death Row, Southern Ohio
Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County

on the 8th day of August, 19 89 at 9:00 o'clock A M (Courtroom # _____)

to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street

Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the

above named individual by _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

Service fees:

1 day's fee tendered \$ _____

Service and Return _____

Mileage _____

TOTAL

\$ _____

SUBPOENA (including command to produce document or object)

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DISTRIBUTION
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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Herb Wendler, Social Worker, Death Row, Southern Ohio Correctional Facility,
P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,

on the 8th day of August, 19 89 at 9:00 o'clock A M (Courtroom #)

to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street

Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the
 above named individual by _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

Service fees:

1 day's fee tendered \$ _____

Service and Return _____

Mileage _____

TOTAL

\$ _____

SUBPOENA (including command to produce document or object)

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

IMAGED

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Sgt. Gordy Pullman, Unit Counselor, Death Row, Southern Ohio
 Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,

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to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 20th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street

Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the

above named individual by _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

Service fees:

1 day's fee tendered \$ _____

Service and Return _____

Mileage _____

TOTAL

\$ _____

IMAGED

STATE OF OHIO

CASE NO. CR83-12-0614

Plaintiff

STATE OF OHIO
COUNTY OF BUTLER
COURT OF COMMON PLEAS

vs.

FILED:

VON CLARK DAVIS

'89 JUL 21 PM 1 20

FILED In Common Pleas Court
Butler County, Ohio
JUL 21 1989
EDWARD S. ROBB, JR.
CLERKMOTION TO STRIKE
DEFENDANT'S WITHDRAWAL
OF JURY WAIVER
AND MEMORANDUM

Now comes John F. Holcomb, Prosecuting Attorney, and moves this Court to strike the defendant's "Withdrawal of Jury Waiver", and to overrule the defendant's motion for withdrawal of jury waiver, for the reason that it is untimely per the requirements of Ohio Revised Code §2945.05.

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

By Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
216 Society Bank Building
Hamilton, Ohio 45012-0515
Telephone (513) 887-3474

MEMORANDUM

The defendant's motion to withdraw his jury waiver does not meet the requirements of Ohio Revised Code §2945.05, which provides in pertinent part:

* * * Such waiver may be withdrawn by the defendant at any time before the commencement of trial.

(Emphasis added.) The defendant's trial has already commenced, the result of that guilt phase of trial has been affirmed by reviewing courts, and other than the trial court's opinion itself, there was no error found in the conduct of the penalty phase. We have before us only a resentencing.

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BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

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IMAGED

Upon remand from an appellate court, a lower court must proceed from the point at which the error occurred. State, ex rel. Stevenson, v. Murray (1982), 69 Ohio St. 2d 112, 431 N.E.2d 324; Tye v. Bd. of Edn. of Polaris Joint Vocational School District (1988), 44 Ohio App. 3d 76, --- N.E.2d ---, paragraph two of syllabus. That point in this case is not the commencement of a retrial, but redetermination of sentence under Ohio Revised Code Sections 2929.03(D)(3) and 2929.03(F). The Ohio Supreme Court remanded the case at bar to the same panel of three judges who heard the guilt phase of trial and had previously imposed sentence, "for a resentencing hearing solely for the purpose of determining whether the remaining aggravating circumstance outweighs the mitigating factors * * *." State v. Davis (1988), 38 Ohio St. 3d 361, 373, 528 N.E.2d 925.

Furthermore, there is no provision in Ohio's procedure for a new jury to hear the penalty phase on remand after an original jury's guilty verdict is affirmed but the cause is remanded for error in the penalty phase. State v. Penix (1987), 32 Ohio St. 3d 369, 513 N.E.2d 744, [interpreting Ohio Revised Code §§2929.022(B) through 2929.04(B).] Indeed, the import of the Penix decision is that the statutes require the same trier of fact to hear both phases, as the statutes consistently refer to "the panel of three judges" and "the trial jury", not "a panel of three judges" and "a trial jury." It was for the reason that the same three judges were available that the Ohio Supreme Court found an exception to the Penix case and remanded the case at bar to the same three judges who heard the trial. Davis, Id. at 373; see also concurring opinion per Holmes, J., Id., at 374. A court of appeals has likewise held in a death penalty case that the jury recommending the sentence cannot be substantially different from the jury that found the defendant guilty. State, ex rel. Miller, v. Gille (1986), 24 Ohio App. 3d 121, 493 N.E.2d 327, paragraph three of syllabus [interpreting Ohio Revised Code §§2929.03(D)(2)].

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- 3 -

IMAGED

Along the same reasoning as State v. Penix, the Ohio Supreme Court has held that the same jury is required to hear the guilt and penalty phases, State v. Mapes (1985), 19 Ohio St. 3d 108, 483 N.E.2d 140; separate juries are neither statutorily provided nor constitutionally required.

See also Beatty v. Alston (1975), 43 Ohio St. 2d 126, 330 N.E.2d 921, (interpreting Crim. R. 25(B) and holding that the judge who presides at a criminal trial must also impose sentence unless he is unable to do so).

Although defendant cited State v. Ruppert (1978), 54 Ohio St. 2d 263, 375 N.E.2d 1250, for grounds that defendant's jury waiver was not knowing and voluntary, that case does not apply in this situation. In Ruppert, the trial court affirmatively misinformed the defendant at the time his jury waiver was made that a three judge panel's verdict of guilt must be unanimous, (although at that time the statutes permitted a majority verdict on guilt while requiring unanimity on the death sentence). Because James Ruppert was misinformed, his jury waiver was ineffective and the total result of the original trial, the conviction and sentence, was reversed on appeal. In the present case, however, the Ohio Supreme Court has affirmed the conviction and guilty verdict of the panel but remanded the case solely for a resentencing hearing. Davis, id., at 373. The trial court here did not, as in Ruppert, misinform defendant when the jury waiver was made. The error of commission in Ruppert does not equate with the alleged error of omission (i.e., not advising defendant that he can be resentenced by a three judge panel in the event that an appeals court finds error in the sentencing phase but otherwise affirms the conviction, whereas an error in the penalty phase of a jury trial results in commutation to a life sentence, cf. Penix). If that were the case, then every three-judge panel's death sentence in Ohio is subject to reversal, because such advice was no doubt "omitted" in every such case.

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BUTLER COUNTY, OHIO

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- 4 -

IMAGED

It is one thing to be misinformed about the direct consequences at trial of a three-judge trial, State v. Ruppert, *supra*, but quite another where no misinformation is given on an appellate issue, (and an issue which was not resolved until the appeal).

It is not required that a defendant be omniscient in order to "knowingly, intelligently and voluntarily" make a jury waiver or guilty plea. In the guilty plea situation in State v. Johnson (1988), 40 Ohio St. 3d 130, 133, 532 N.E.2d 1295, 1298, the Supreme Court held that neither the United States Constitution nor the Ohio Constitution requires a trial court to go beyond the specific mandate of Crim. R. 11(C)(2) and advise a defendant that sentences for crimes to which he pleads guilty may be imposed consecutively, and held that the failure to so advise a defendant is not error; the Court stated, "We shall not at this time implant verbiage that is not presently in the rule." *Id.* at 134, (emphasis added). The Court in Johnson reasoned that the decision to run sentences concurrently or consecutively involves a matter within the trial court's discretion, and that "Crim. R. 11 applies only to the entry and acceptance of the plea. It has no relevance to the exercise of the trial court's discretion at that stage * * *." *Id.* at 134. Likewise, in the case at bar, the issue of what happens after appeal in the event there is a reversal of a death sentence but affirmance of the conviction on appeal is of no relevance at the time a jury waiver is made in the trial court; a trial court simply cannot recite a laundry list of procedural possibilities in appellate courts at the time a jury waiver is proffered. That is simply not "what happens in a real live courtroom." Johnson, *Id.*, at 135, (Wright, J., dissenting). In fact, a jury waiver is different than a guilty plea, in that it is simply required to be in writing; it is not required that the trial court personally advise the defendant of the consequences of the jury waiver. State v. Morris (1982), 8 Ohio App. 3d 12, 14, 455 N.E.2d 1352; State v. Wilson (June 6, 1988), Butler App. No. CA87-10-140, unreported.

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BUTLER COUNTY, OHIO

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- 5 -

IMAGED

Defendant also claims that his jury waiver was "not knowing, intelligent and voluntary" because it was made only after the trial court denied the request to sever the weapons under disability count. That argument is "water over the dam," because the Supreme Court held in this case (affirming the Court of Appeals' similar conclusion) that the trial court properly overruled defendant's motion to sever the weapons under disability count, holding that there was no error in the joinder of both offenses counts in the same trial, and further rejecting his "contention that he was 'forced' into waiving the right to a jury trial because of the possibility that the jury would not follow a curative instruction * * *." State v. Davis, id., 38 Ohio St. 3d, at 364. The Supreme Court found that defendant was not prejudiced by the joinder, noting in a footnote that "The mere possibility that the defendant might have a better choice of trial tactics if the counts are separated, or the mere possibility that the defendant might desire to testify on one count and not the other, is insubstantial and speculative; it is not sufficient to show prejudice." Id. at 364 n. 7. This Court must apply the law of the case doctrine, to follow the Supreme Court's previous rulings in the case.

Because the withdrawal of jury waiver is a legal impossibility at this stage of the case, the defendant's motion to withdraw his jury waiver should be overruled.

Respectfully submitted,

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

By Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
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OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

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P.O. BOX 515
HAMILTON, OHIO 45012

IMAGEL

- 6 -

PROOF OF SERVICE

I hereby certify that copies of the within Memorandum was served upon Timothy R. Evans, John A. Garretson, and Michael D. Shanks, Attorneys for Defendant, at their respective offices by U.S. ordinary mail, this _____ day of July, 1989.

Daniel G. Eichel

DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

IMAGED

STATE OF OHIO : CASE NO. CR83-12-0614

Plaintiff : STATE OF OHIO

vs. FILED : COUNTY OF BUTLER

VON CLARK DAVIS '89 JUL 24 **ORDERED in Common Pleas Court** COURT OF COMMON PLEAS

Defendant **CLERK OF COURTS** **JUL 21 1989** **ORDER RE TRANSPORT OF**

EDWARD S. ROBB, JR. **BUTLER COUNTY, OHIO.** **DEFENDANT AND SETTING**

EDWARD S. ROBB, JR. **HEARING DATE ON REMAND**

CLERK

: : : : : : : :

It appearing that the Court that pursuant to the Mandate of the Ohio Supreme Court In State v. Davis (1988), 38 Ohio St. 3d 361, 528 N.E.2d 925, that Court affirmed the conviction herein, and remanded the matter to this Court for a resentencing as to the offense of Aggravated Murder with Specification, In violation of Ohio Revised Code Section 2903.01(A), It is hereby

ORDERED that the Superintendent of the Southern Ohio Correctional Facility at Lucasville, Ohio shall cause the defendant, Von Clark Davis, Institution No. 179-828, to be released to the Sheriff of Butler County, who shall cause the said defendant to be transported and held at the Butler County Jail at Hamilton, Ohio, pending further proceedings herein.

It is **FURTHER ORDERED** that this matter is hereby scheduled for final disposition on the 4th day of August, 1989.

SO ORDERED.

H. J. Bruwer
 JUDGE HENRY J. BRUEWER

Approved as to Form:

JOHN F. HOLCOMB
 PROSECUTING ATTORNEY
 BUTLER COUNTY, OHIO

OFFICE OF
 PROSECUTING ATTORNEY
 BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
 PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
 P.O. BOX 515
 HAMILTON, OHIO 45012

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IMAGED

COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

FILED

STATE OF OHIO

*

Case No.: CR83-12-0614

'89 JUL 24 PM 3 29

Plaintiff

*

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

CLERK OF COURTS

vs.

*

MOTION TO RENEW ~~PRETRIAL~~ MOTIONS.

VON CLARK DAVIS

*

JUL 24 1989

EDWARD S. ROBB, JR.

Defendant

CLERK

Now comes the Defendant, Von Clark Davis, by and through counsel, John A. Garretson, Timothy R. Evans and Michael D. Shanks and respectfully moves the Court to renew all Pretrial Motions previously filed in the above captioned cas, including but not specifically limited to all challenges as to the constitutionality of the death penalty statute presently at issue and the sentencing scheme thereunder for the reasons previously stated and filed by written Memorandum and Oral Argument to this Court.

BRESSLER, SHANKS & GEDLING CO., LPA
Attorneys for Defendant
304 North Second Street
Hamilton, Ohio 45011
Telephone: 863-2112

By: 

Michael D. Shanks (A-282)

JOHN A. GARRETSON
Attorney for Defendant
616 Dayton Street
Hamilton, Ohio 45011
Telephone: 863-6600

By: 

John A. Garretson

TIMOTHY R. EVANS
Attorney for Defendant
315 South Monument Avenue
Hamilton, Ohio 45011
Telephone: 868-7600

By: 

Timothy R. Evans


BRESSLER, SHANKS
& GEDLING CO., L.P.A.
ATTORNEYS AT LAW
304 NORTH SECOND STREET
HAMILTON, OHIO 45011


513-863-2112


IMAGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was hand delivered to Mr. John Holcomb, Prosecuting Attorney, 216 Society Bank Building, 2nd and High Streets, Hamilton, Ohio 45011, this 28 day of July, 1989.

By: 
Michael D. Shanks (A-282)

By: 
John A. Garretson

By: 
Timothy R. Evans

BRESSLER, SHANKS
& GEDLING CO., L.P.A.
ATTORNEYS AT LAW
304 NORTH SECOND STREET
HAMILTON, OHIO 45011

513-863-2112

COURT OF COMMON PLEAS

IMAGED

BUTLER COUNTY, OHIO

STATE OF OHIO

* FILED Case No.: CR83-12-0614

Plaintiff

* '89 JUL 24 PM 3 29

vs.

*

MOTION TO PERMIT THE DEFENSE
TO ADMIT ALL RELEVANT EVIDENCE
AT THE SENTENCING PHASE

VON CLARK DAVIS

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

Defendant

JUL 24 1989

EDWARD S. ROBB, JR.
CLERK

Now comes the Defendant, Von Clark Davis, by and through counsel, John A. Garretson, Timothy R. Evans and Michael D. Shanks and respectfully moves this Court to permit him to submit all evidence at the sentencing phase which may be relevant, minimally reliable and trustworthy under the authority of State vs. Glenn, 228 Ohio St. 3rd. 451, including any evidence, regarding facts and circumstances occurring subsequent to the conviction in the above captioned case.

MEMORANDUM IN SUPPORT

The Ohio Rules of Evidence, Ohio Case Law and Federal Constitutional precedent demonstrate that mitigating evidence must be admitted at a sentencing hearing if it is relevant and demonstrates a minimum degree of trustworthiness and reliability. Ohio Rules of Evidence, Rule 101, states in pertinent part at Subsection (3), that the strict rules of evidence do not apply to sentencing hearings. Further, in State vs. Glenn, 28 Ohio St. 3rd. 451 (1986), the Court returned to its earlier stance that as long as reliable and trustworthy evidence can be minimally insured it may be admitted at the mitigation phase.

Further, the Eighth Amendment of the United States Constitution requires that a capital sentencing authority "be allowed to consider on the basis of all relevant evidence, not only why death sentence should be imposed, but also why it should not be imposed", (Jurek vs. Texas, 428 U.S. 262 at 271). In the present case we have an unusual situation where the Court has asked to reconsider the imposition of the death penalty approximately five (5) years after the original conviction. Fundamental fairness requires that this Court, so considering such a penalty, should reflect upon all of the evidence being offered by Defendant since Defendant's conduct subsequent to the conviction may in large part tip the balance in favor of life. The Chief Justice of the United States writing for the plurality in Lockett vs. Ohio, 438 U.S. 586, noted that:

the sentencer, in all but the rarest kind of capital case, not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.

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ATTORNEYS AT LAW
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The Lockett Court went on to conclude that to deny the Defendant from presenting any mitigating evidence at a sentencing hearing when the choice was between life and death, subjected the Defendant to a risk that was unacceptable and incompatible with the commands of the Eighth and Fourteenth Amendments of the United States Constitution. In the present case, Defendant wishes to provide this Court with additional evidence as to his exemplary conduct post conviction for the crime at issue and believes that such evidence will provide substantial mitigating factors for this Court to consider under the Statutes of the State of Ohio.

It is therefore respectfully requested that the Defendant be specifically allowed to provide all evidence of mitigating circumstances regardless of the nature, type or timing of such evidence at the hearing in this matter.

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Attorneys for Defendant
304 North Second Street
Hamilton, Ohio 45011
Telephone: 863-2112

By: [Signature]
Michael D. Shanks (A-282)

JOHN A. GARRETSON
Attorney for Defendant
616 Dayton Street
Hamilton, Ohio 45011
Telephone: 863-6600

By: [Signature]
John A. Garretson

TIMOTHY R. EVANS
Attorney for Defendant
315 South Monument Avenue
Hamilton, Ohio 45011
Telephone: 868-7600

By: [Signature]
Timothy R. Evans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was hand delivered to Mr. John Holcomb, Prosecuting Attorney, 216 Society Bank Building, 2nd and High Streets, Hamilton, Ohio 45011 this 24th day of July, 1989.

By: [Signature]
Michael D. Shanks

By: [Signature]
John A. Garretson

By: [Signature]
Timothy R. Evans

BRESSLER, SHANKS
& GEDLING CO., L.P.A.
ATTORNEYS AT LAW
304 NORTH SECOND STREET
HAMILTON, OHIO 45011

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3. Article Addressed to: 230	4. Article Number 39117
<p>Sgt. Gordy Pullman, Unit Counselor, Death Row Southern Ohio Correctional Facility P.O. Box 45699 Lucasville, Ohio 45699 CR83 12 0614 Subpoena</p>	
<p>Type of Service: <input checked="" type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p>	
5. Signature - Address X <i>Gordy Pullman</i>	<p>Always obtain signature of addressee or agent and DATE DELIVERED</p> <p>Filed in Common Pleas Court SOUTHERN OHIO</p> <p>JUL 25 1989</p> <p>EDWARD S. ROBB, JR. CLERK</p>
6. Signature - Agent X	
7. Date of Delivery 7-21-89	
<p>8. Addressee's Address (ONLY if requested and fee paid)</p>	
<p>PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT</p>	

<p>● SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.</p> <p>Put your address in "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.</p> <p>1. <input checked="" type="checkbox"/> Show to whom delivered, date, and addressee's address. (Extra charge) 2. <input type="checkbox"/> Restricted Delivery (Extra charge)</p>	
3. Article Addressed to: 230	4. Article Number 39118
<p>Capt. Oscar McGraw, Unit Manager, Death Row Southern Ohio Correctional Facility P.O. Box 45699 Lucasville, Ohio 45699 CR83 12 0614 Subpoena</p>	
<p>Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise</p>	
<p>Always obtain signature of addressee or agent and DATE DELIVERED</p> <p>Filed in Common Pleas Court SOUTHERN OHIO</p> <p>JUL 25 1989</p> <p>EDWARD S. ROBB, JR. CLERK</p>	
5. Signature - Address X <i>Oscar E. McGraw</i>	<p>8. Addressee's Address (ONLY if requested and fee paid)</p>
6. Signature - Agent X	
7. Date of Delivery 7-21-89	
<p>PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT</p>	

IMAGED

STATE OF OHIO : CASE NO. CR83-12-0614
 Plaintiff :
 vs. : STATE OF OHIO
 : COUNTY OF BUTLER
 : COURT OF COMMON PLEAS

VON CLARK DAVIS

Defendant

MEMORANDUM IN OPPOSITION
 TO DEFENDANT'S MOTION
 TO PROHIBIT 3-JUDGE PANEL
 FROM RESENTENCING TO DEATH
 AND TO DISQUALIFY PANEL

: : : : : : : :

Now comes John F. Holcomb, Prosecuting Attorney, and says that defendant's motion to prohibit this three-judge Court from resentencing defendant to death, or alternatively to disqualify the panel, should be overruled.

Upon remand from an appellate court, a lower court must proceed from the point at which the error occurred. State, ex rel. Stevenson, v. Murray (1982), 69 Ohio St. 2d 112, 431 N.E.2d 324; Tye v. Bd. of Edn. of Polaris Joint Vocational School District (1988), 44 Ohio App. 3d 76, --- N.E.2d ---, paragraph two of the syllabus. See generally 50 Jur 3d, Appellate Review, § 717. That point, in this case, is specifically the redetermination of sentence under Ohio Revised Code Sections 2929.03(D)(3) and 2929.03(F). The Ohio Supreme Court remanded the case at bar to the three-judge panel who originally heard the trial and had previously imposed sentence, "for a resentencing hearing solely for the purpose of determining whether the remaining aggravating circumstance outweighs the mitigating factors * * *," State v. Davis (1988), 38 Ohio St. 3d 361, 373, 528 N.E.2d 925. At said resentencing hearing, "the state may seek whatever punishment is lawful, including, but not limited to, the death sentence." Id., syllabus.

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The Supreme Court's lead opinion by Justice Locher, in which four of the justices concurred, noted that "This action did not involve a jury recommendation. Consequently, we are not compelled to find our decision in Penix, supra, [State v. Penix (1987), 32 Ohio St. 3d 369, 513 N.E.2d 744], controlling in this matter." State v. Davis, supra, at 373. Justice Holmes, who dissented on the ground that he would have found that there was no error in the original sentencing decision, restated his original disagreement with the Penix case, and would likewise find no obstacle to the three-judge panel conducting a resentencing hearing; in his opinion, any three judges could redetermine sentence under Crim. R. 25(B), even if any or all of the original three judges were unavailable. State v. Davis, supra, at 373-375. (Thus, five out of seven Justices would agree that the resentencing can take place.) Dissenting Justice Douglas, with whom Chief Justice Moyer concurred, would likewise have found that the original sentencing decision in this case was not error; however, Justice Douglas took exception to the majority's remand for resentencing inclusive of the death penalty, disagreeing with the majority's finding that Penix was not controlling. It is upon Justice Douglas's dissent that defendant bases his argument, whereas it was clear that five out of seven Justices disagree with that position.

It was represented at the oral argument before the Ohio Supreme Court by counsel for defendant, Mr. Evans, that the three judges who were the trial panel in this case remained available for a rehearing, and that there was no obstacle to the panel's ability to hear the case on remand inclusive of the death penalty. That was on March 2, 1988, when Mr. Evans knew that Judge Bruewer was the Probate Division Judge. The idea that remand was available, inclusive of reconsideration of the death penalty, may have been a determining factor in the Supreme Court's decision to remand the case for resentencing inclusive of the death penalty.

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Why did counsel for defendant represent to the Supreme Court that the same three-judge panel could hear the case on remand, inclusive of the death penalty? No doubt counsel considered the fact that the alternative, (i.e., to hold that there was no possibility of remand and that only a life sentence was possible after error was found in the sentencing decision), would have a chilling effect on the Supreme Court's consideration of his argument that the written opinion's error was prejudicial and was not cured by independent review, as the court of appeals had found. See State v. Davis, supra, at 372. At any rate, regardless of the motivations of counsel, we cannot tolerate a party making representations to the Supreme Court upon which that Court relies in making its decision, only to see the same party making the opposite arguments at a later proceeding in the same case before a different court when the previous representation no longer serves his purpose.

The "law of the case" doctrine requires the trial court to follow the mandate of a reviewing court in subsequent proceedings on the same case, see 23 O Jur 3d Courts and Judges, §506, and 5 O Jur 3d Appellate Review, § 718. The issue previously decided in this case is res judicata, and the trial court is bound to follow the mandate of the Supreme Court which remanded the case "for a resentencing hearing solely for the purpose of determining whether the remaining aggravating circumstance outweighs the mitigating factors * * *," at which hearing "the state may seek whatever punishment is lawful, including, but not limited to, the death sentence." State v. Davis, supra, at 373. The remand was to "that trial court," see id., syllabus, (referring to the three judge panel which imposed the death sentence that was vacated).

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As does defendant, the State also incorporates by reference the essential arguments made in the Supreme Court of the United States as to why there is no constitutional bar to the resentencing procedure, inclusive of reconsideration of the death penalty, as required by the Ohio Supreme Court's mandate to this trial court. The Ohio Supreme Court's decision itself cited two cases, Skipper v. South Carolina (1986), 476 U.S. 1, and Poland v. Arizona (1986), 476 U.S. 147, which held that the Double Jeopardy Clause poses no bar to reconsideration of the sentence of death where a death sentence has been reversed on appeal and the case is remanded for further proceedings. The relevant pages, 12 and 13, of the State of Ohio's Brief In Opposition to Petition for Writ of Certiorari are inserted herein:

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III. The Ohio Supreme Court's decision permitting the resentencing of a capital defendant, including reconsideration of the death sentence, by a three-judge trial court which tried the case, after reversal of such trial court for an error of law in its written sentencing decision mandated by state law, does not offend the Ex Post Facto Clause, the Sixth Amendment, the Eighth Amendment, or the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution.

Aside from the jurisdictional difficulties with addressing a death penalty issue where no death penalty has been imposed, [Parts I and II *supra*], the several arguments of Petitioner's First Question Presented are without merit.

On the Equal Protection issue, valid grounds exist on which to make a distinction between situations of the respective defendants in *State v. Penix*, 32 Ohio St. 3d 369, 513 N.E.2d 744 (1987), and the situation at bar. The reversible error in *Penix* was at the jury recommendation stage of the penalty phase, where the jury recommendation of death was made as a result of a flawed hearing due to incorrect jury instructions or improperly admitted evidence at the hearing. In the situation presented in the case at bar, however, a written sentencing decision by a three-judge court, (mandated by law under Ohio Revised Code §2929.03(F) for the apparent purpose of facilitating mandatory appellate review of the death sentence), was in error on a matter of law. Reversal and remanding was "solely for the purpose of determining whether the remaining aggravating circumstance outweighs the mitigating factors presented by [Davis], beyond a reasonable doubt." *State v. Davis*, *supra*, at 373, 528 N.E.2d, at 936. The Petitioner here is in the same position as would be a capital defendant, tried without trial error in the penalty stage and for whom the jury recommendation was affirmed as factually supported by the evidence, but the single trial judge presiding over his jury trial after the recommendation of death had made an error in the sentencing decision under Ohio Revised Code §2929.03(F). In that hypothetical scenario, (which has yet to happen in Ohio), a remand to that trial judge for reconsideration of sentence inclusive of the death penalty would place a capital defendant tried by jury in the same posture as the Petitioner here.

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IMAGED

Further, it is no different here for the Supreme Court of Ohio to reverse a written decision of the three-judge trial court than when a state's highest court reverses the state's intermediate reviewing court on a matter of law they have misstated in their decision. A jury recommendation stands on a different footing. This Court has recognized that "the jury's role in the criminal process is essentially unreviewable and not always rational." Spaziano v. Florida, 468 U.S. 447, 455 (1984). On the other hand, the written opinion of a three-judge panel is intentionally reviewable, and is required to be rational.

Petitioner's Sixth Amendment jury trial issue is apparently based sub silentio on United States v. Jackson, 390 U.S. 570 (1968), but it is difficult to accept the theory that the right to a jury trial was "chilled" where the defendant made a knowing and voluntary choice available under state law to be tried to a three-judge panel trial court rather than a jury, accepting the option that judges, and not a jury, would determine both his guilt and his punishment. See Lockett v. Ohio, 438 U.S. 586, 633-635 (1978) (Rehnquist, J., dissenting). Since both procedures are sufficiently fair to satisfy the Constitution, there is no infirmity in requiring Petitioner to choose which he prefers. Id., at 634. See also Spaziano, supra, at 455-457, (discussing the fairness of a defendant having to choose between waiving a statute of limitations defense to a lesser crime than murder, or having the benefit of the lesser included offense instruction in a capital murder prosecution).

Petitioner alludes to an ex post facto problem, without explanation; but from the decision of the Ohio Supreme Court it is clear that this was simply an interpretation of a statutory scheme enacted by the General Assembly of Ohio before the Petitioner's criminal act, and the interpretation is fairly discerned in the language of the statute. See Dobbert v. Florida, 432 U.S. 282 (1982).

Finally, the Ohio procedure does not incline itself toward arbitrary and capricious imposition of the death penalty, cf. Godfrey v. Georgia, 446 U.S. 420 (1980). There is nothing in the remanding itself to raise the Petitioner's risk of suffering the imposition of the death penalty, but rather, it was as the result of his appeal that he was placed back in the same position as he was before the error at the penalty phase of his trial. See North Carolina v. Pearce, 395 U.S. 711 (1969), and Poland v. Arizona, supra.

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Finally, as to the defendant's objection to Judge Bruewer's qualifications to serve on the panel on the ground that he is Probate Judge, the Ohio Supreme Court has held that a judge of the Probate Division of the Common Pleas Court is not disqualified to serve in criminal cases. State v. Cotton (1978), 56 Ohio St. 2d 8, 381 N.E.2d 190, paragraph four of the syllabus. Specifically, State v. Cotton was a capital case in which the Probate Judge served on a three-judge panel. The Court reasoned that Ohio Revised Code § 2931.01(B), which seemingly excludes the probate judge from hearing criminal cases, is in conflict with Section 4, Article IV of the Ohio Constitution, as well as Section 5(A)(3), Article IV of the Ohio Constitution, and is thus ineffective to disqualify the Probate Judge from serving on a three-judge panel in a capital case. Id., 56 Ohio St. 2d, at __, 381 N.E.2d, at 194. Further, Ohio Revised Code §2301.01 provides, in pertinent part,

* * *

Judges of the probate division of the court of common pleas are judges of the court of common pleas, but shall be elected pursuant to sections 2101.02 and 2101.021 of the Revised Code * * *.

Judge Bruewer was originally elected to the common pleas bench pursuant to Ohio Revised Code §2301.01 for the term commencing January 1, 1979; he was reelected to an additional six-year term commencing January 1, 1985, but in the middle of said term, he was appointed to fill the vacancy of the probate judge who resigned his office, Judge Niehaus, which remainder of term commenced January 3, 1987. Thereafter, Judge Bruewer was elected pursuant to Ohio Revised Code §2101.02 to fill the remainder of the probate judge's term of office, February 9, 1989 through February 8, 1991. Thus, Judge Bruewer has continuously remained a judge of the court of common pleas at all times pertinent, and the order of the presiding judge (at the time, Judge David Black) should remain in full force and effect as the law of the case herein.

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IMAGED

In conclusion, the defendant's motion to prohibit this three-judge panel from resentencing defendant to death and motion to disqualify panel should be overruled.

Respectfully submitted,

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

By Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO
216 Society Bank Building
Hamilton, Ohio 45012-0515
Telephone: (513)887-3474

PROOF OF SERVICE

I hereby certify that copies of the within Memorandum was served upon Timothy R. Evans, John A. Garretson, and Michael D. Shanks, Attorneys for Defendant, at their respective offices by U.S. ordinary mail, this 25th day of July, 1989.

Daniel G. Eichel
DANIEL G. EICHEL
FIRST ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

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IMAGEL

FILED

State of OH **89 JUL 26 AM 10:07** COMMON PLEAS COURT
Plaintiff **CLERK OF COURTS** BUTLER COUNTY, OHIO
EDWARD S. ROBB, JR. Case CR 83-12-0614
-vs- **FILED in Common Pleas Court**
BUTLER COUNTY, OHIO
Von Clark Davis **JUL 26 1969** E N T R Y
Defendant **EDWARD S. ROBB, JR.**
CLERK

::::::::::::

It appearing to this court that The Supreme
Court of Ohio by decision in the case of State v. Davis,
38 Ohio St. 3d, 361 held:

When a reviewing court vacates the death
sentence of a defendant imposed by a
three-judge panel due to error occurring
at the penalty phase, not otherwise
covered by R.C. 2929.06, and the
reviewing court does not find the
evidence to be legally insufficient to
justify imposition of the death
sentence, such reviewing court may
remand the action to that trial court
for a resentencing hearing at which the
state may seek whatever punishment is
lawful, including, but not limited to,
the death sentence.

And it further appearing that the trial court
that held the original trial of State v. Davis was a
three-judge panel composed of Henry J. Bruewer, John R.
Moser and William R. Stitsinger, and,

It further appearing that Henry J. Bruewer is
now a Common Pleas Judge, Probate Division of this county
whereas he was a judge in the General Division at the time

J0Q43P664

Judge
WILLIAM R. STITSINGER

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FILED IN -2- Case #
BUTLER COUNTY, OHIO

JUL 23 1989

EDWARD S. ROBB, JR.
CLERK

of the original trial;

It is therefore hereby ordered in accordance with Rules of Superintendence for Courts of Common Pleas, Rule #2 that the undersigned as Presiding Judge does hereby assign Henry J. Bruewer from the Probate Division to serve in the General Division (trial division) to hear together with Judges Moser and Stitsinger the remand for a resentencing hearing as ordered by The Supreme Court of Ohio above referred to.


William R. Stitsinger
Presiding Judge

J0043P665

Judge
WILLIAM R. STITSINGER

Clk. 16

BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

Precipe for Subpena—In Civil Case

Revised Code, Sec. 2303.01, 2317.11-13

STATE

IMAGED

STATE OF OHIO

vs.

Plaintiff

VON CLARK DAVIS

Defendant

FILED

No. CR 83 123 0614

'89 JUL 26 AM 9 13
COMMON PLEAS COURT
CLERK OF COURTS
EDWARD S. ROBB, JR.

To the Clerk:—Issue Subpena for

RESIDENCE

1 Capt. Oscar McGraw, Unit
Manager, Death RowSouthern Ohio Correctional
Facility, P. O. Box 45699,
Lucasville, Ohio 456992 Sgt. Gordy Pullman, Unit
Counselor, Death Row

Same

3 Herb Wendler, Social Worker,
Death Row

Same

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

JUL 26 1989

EDWARD S. ROBB, JR.
CLERK

to appear as witnesses in above named case, on Friday, August 4

A. D. 19 89, at 9:00 o'clock A. M. Required on behalf of the defendant

JOHN A. GARRETSON

Att'y for the Defendant

SUBPOENA (including command to produce document or object)

BA BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

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 Canary - Attorney

IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Sgt. Gordy Pullman, Unit Counselor, Death Row,
 Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,

on the 4th day of August, 19 89 at 9:00 o'clock A M (Courtroom #)

to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 26th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street, Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.
 Clerk of Courts

by C. Carpenter
 Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

4/5
p. 61

SUBPOENA (including command to produce document or object)

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IN THE Common Pleas Court, Hamilton, OHIO
(Court)

State of Ohio

Case No. CR83 12 0614

VS

Von Clark Davis

Herb Wendler, Social Worker, Death Row,
To: Southern Ohio Correctional Facility, P. O. Box 45699, Lucasville, Ohio 45699

SUBPOENA
CIVIL/CRIMINAL ☒ CR
DUCES TECUM ☐
GRAND JURY ☐

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And, to bring with you

July 26th, 19 89

John A. Garretson Attorney
Attorney for Defendant
616 Dayton Street, Hamilton Ohio 45011
Attorney Address and Phone

Edward S. Robb Jr.
Clerk of Courts
C. Carpenter
by
Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

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July 26th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street, Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
Deputy Clerk

(NOTE - Present this Subpena when claiming your fee.)

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

VS

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Capt. Oscar McGraw, Unit Manager, Death Row,
 Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County,

on the 4th day of August, 19 89 at 9:00 o'clock A M (Courtroom # _____)

to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 26th _____, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street, Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the

above named individual by _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

Service fees:

1 day's fee tendered \$ _____

Service and Return _____

Mileage _____

TOTAL

\$ _____

SUBPOENA (including command to produce document or object)

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Sgt. Gordy Pullman, Unit Counselor, Death Row,
Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville, Ohio 45699

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to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 26th, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street, Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the

above named individual by _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

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1 day's fee tendered \$ _____

Service and Return _____

Mileage _____

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IN THE Common Pleas Court, Hamilton, OHIO
 (Court)

State of Ohio

Case No. CR83 12 0614

vs

Von Clark Davis

SUBPOENA

CIVIL/CRIMINAL ☒ CR
 DUCES TECUM ☐
 GRAND JURY ☐

To: Herb Wendler, Social Worker, Death Row,
 Southern Ohio Correctional Facility, P. O. Box 45699, Lucasville, Ohio 45699

YOU ARE HEREBY COMMANDED to appear in the Common Pleas Court of Butler County
 on the 4th day of August, 19 89 at 9:00 o'clock A M (Courtroom #)
 to attend and give testimony on behalf of Defendant in the above entitled case under penalty of law.

And, to bring with you

July 26th
 _____, 19 89

John A. Garretson Attorney

Attorney for Defendant

616 Dayton Street, Hamilton Ohio 45011

Attorney Address and Phone

Edward S. Robb Jr.

Clerk of Courts

C. Carpenter

by
 Deputy Clerk

RETURN ON SERVICE

On the _____ day of _____, 19 _____, I served the
 above named individual by _____

Service fees:
 1 day's fee tendered \$ _____
 Service and Return _____
 Mileage _____

TOTAL

\$ _____

Dated _____, 19 _____

Sheriff of _____ County

by _____

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2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: 230
Herb Wendler, Social Worker, Death Row
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699
CR83 12 0614 Subpoena

4. Article Number: 59116

Type of Service:
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☒ Certified ☐ COD
☐ Express Mail ☐ Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED.

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6. Signature — Agent
X Erwin Wendler

7. Date of Delivery
7/25/89

8. Addressee's Address ONLY (if requested and fee paid)
BUTLER COUNTY, OHIO
JUL 27 1989
EDWARD S. ROBB, JR.

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EDWARD S. ROBB, JR.
CLERK OF COURTS
BUTLER COUNTY COURTHOUSE
HAMILTON, OHIO 45011

IN THE COURT OF COMMON PLEAS

IMAGED

FILED
BUTLER COUNTY, OHIO
'89 AUG 1 AM 11 15

STATE OF OHIO,

Plaintiff, CLERK OF COURTS
EDWARD S. ROBB, JR. CASE NO. CR83-12-0614

-VS-

VON CLARK DAVIS,

FILED in Common Pleas Court
BUTLER COUNTY, OHIO
AUG 1 1989
EDWARD S. ROBB, JR.
CLERK

ENTRY AS TO MOTIONS
HEARD JULY 31, 1989

Defendant.

This 31st day of July, 1989, this cause came on to be heard before a three judge panel consisting of Judges Henry J. Bruewer, William R. Stitsinger, and John R. Moser, on the remand of the Ohio Supreme Court, reported as State v. Davis (1988), 38 Ohio St. 3d 361, and upon the several motions of the defendant by and through his counsel, Michael D. Shanks and John A. Garretson, and upon the motion of the prosecution to strike the defendant's withdrawal of jury waiver; and the Court having due consideration to the motions and memoranda of counsel in support of and in opposition to said motions, hereby makes disposition of said motions, as follows:

It is **ORDERED** that the defendant's motion to renew pretrial motions previously filed herein is hereby **OVERRULED**, all previous rulings on said motions remaining in full force and effect.

It is **FURTHER ORDERED** that the defendant's motion to permit defendant to present additional evidence at the sentencing phase is hereby **OVERRULED**.

It is **FURTHER ORDERED** that the defendant's motion for further psychological evaluations and appointment of social worker is hereby **OVERRULED**.

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

J00447031

141

Butler County Court
BUTLER COUNTY, OHIO

AUG 1 1969

EDWARD S. ROBB, JR.
CLERK

- 2 -

IMAGED

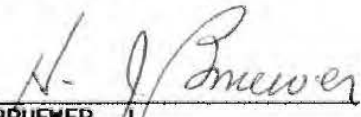
It is **FURTHER ORDERED** that the defendant's motion to withdraw his jury waiver is hereby **OVERRULED**.

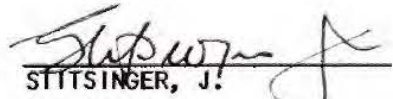
It is **FURTHER ORDERED** that the Prosecuting Attorney's motion to strike the defendant's withdrawal of jury waiver is hereby **SUSTAINED**, and the defendant's withdrawal of jury waiver shall be stricken.

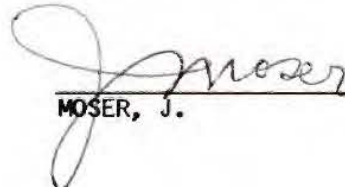
It is **FURTHER ORDERED** that the defendant's motion requesting this Court to sentence him to life imprisonment on grounds of equal protection clause, the double jeopardy clause, and the ex post facto clause, is hereby **OVERRULED**.

It is **FURTHER ORDERED** that the defendant's motion to prohibit this three-judge panel from resentencing to death and motion to disqualify panel is hereby **OVERRULED**.

ENTER


BRUEWER, J.


STITSINGER, J.


MOSER, J.

APPROVED AS TO FORM:

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
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HAMILTON, OHIO 45012

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Herb Wendler, Social Worker, Death Row
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699
CR83 12 0614 Subpoena

4. Article Number 59397

Type of Service:
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X Edward S. Wendler

6. Signature — Agent
X

7. Date of Delivery 7/27/89

8. Addressee's Address (ONLY if requested and fee paid)
AUG 01 1989
EDWARD S. ROBB, JR.
CLERK

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EDWARD S. ROBB, JR.
CLERK OF COURTS
BUTLER COUNTY COURTHOUSE
HAMILTON, OHIO 45011

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3. Article Addressed to: 230

4. Article Number 53398

Sgt. Gordy Pullman, Unit Counselor, Death Row
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699
CR83 12 0614 Subpoena

Type of Service:
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Express Mail ☐ Return Receipt for Merchandise

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5. Signature — Address
X Edward S. Robb, Jr.

6. Signature — Agent
X

7. Date of Delivery 7-27-89

8. Addressee's Address (ONLY IF requested and fee paid)
AUG 04 1989
EDWARD S. ROBB, JR.
CLERK

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CLERK OF COURTS
BUTLER COUNTY COURTHOUSE
HAMILTON, OHIO 45011

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3. Article Addressed to: 230
Capt. Oscar McGraw, Unit Manager, Death Row
Southern Ohio Correctional Facility
P.O. Box 45699
Lucasville, Ohio 45699
CR83 12 0614 Subpoena

4. Article Number 53396

5. Signature - Address
X Oscar E. McGraw

6. Signature - Agent
X

7. Date of Delivery
27 JULY 89


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AUG 01 1989
EDWARD S. ROBB, JR.
CLERK


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CLERK OF COURTS
BUTLER COUNTY COURTHOUSE
HAMILTON, OHIO 45011

IMAGE

FILED In - Superior Court
BUTLER COUNTY, OHIO

AUG 7 1989

EDWARD S. ROBB, JR.
CLERKState v. Davis
Case No. CR83-12-0614
Judgment of Conviction Entry

addressed the defendant personally and asked if he wished to make a statement in his own behalf or present anything further in mitigation of punishment, and nothing being shown as to why sentence should not now be pronounced,

It is hereby **ORDERED** that the defendant, Von Clark Davis, be sentenced to death by electrocution as provided by law, pursuant to Ohio Revised Code Sections 2949.21 et seq., as to **Count One** of the indictment, by causing a current of electricity, of sufficient intensity to cause the death, to pass through the body of the defendant, the application of such current to be continued until said defendant is dead. The Warden of the Southern Ohio Correctional Facility at Lucasville, Ohio, or, in his absence, a deputy warden, shall be the executioner. Said death sentence is to be executed on the 4th day of December, 1989, within the walls of the Southern Ohio Correctional Facility at Lucasville, Ohio, and within an enclosure prepared for such purpose under the direction of the Warden, which enclosure shall exclude public view. It is **FURTHER ORDERED** that the Clerk shall issue a Writ for the execution of the death penalty, directed to the Sheriff of Butler County, who is **FURTHER ORDERED** to convey the said defendant, within thirty days and in a private manner, to the Southern Ohio Correctional Facility at Lucasville, Ohio, where said defendant shall be received by the Warden and kept until the day designated for his execution. It is **FURTHER ORDERED** as to **Count One** that the defendant shall pay the costs of prosecution.

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIOJOHN F. HOLCOMB
PROSECUTING ATTORNEY215 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

100047231

IMAGED

- 3 -

State v. Davis
Case No. CR83-12-0614
Judgment of Conviction Entry


Inasmuch as Section 2929.71 of the Ohio Revised Code does not provide for a sentence to be imposed on Specification II to Count One where the sentence of death has been imposed as to Count One, the Court passes no sentence as to Specification II to Count One.

Defendant was notified of his right to appeal as required by Criminal Rule 32(A)(2).

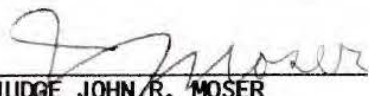
E N T E R

APPROVED AS TO FORM:

JOHN F. HOLCOMB
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO


JUDGE HENRY J. BRUEWER


JUDGE WILLIAM R. STITSINGER


JUDGE JOHN R. MOSER

FILED In Common Pleas Court
BUTLER COUNTY, OHIO
AUG 7 1989
EDWARD S. ROBB, JR.
CLERK

OFFICE OF
PROSECUTING ATTORNEY
BUTLER COUNTY, OHIO

JOHN F. HOLCOMB
PROSECUTING ATTORNEY

216 SOCIETY BANK BUILDING
P.O. BOX 515
HAMILTON, OHIO 45012

100457232

IN THE COURT OF COMMON PLEAS

IMAGED

BUTLER COUNTY, OHIO

FILED

STATE OF OHIO,

'89 AUG 10 AM 9 20

Plaintiff,

CLERK OF COURT CASE NO. CR83-12-0614
EDWARD S. ROBB, JR.

-VS-

OPINION

VON CLARK DAVIS,

Defendant.

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

AUG 10 1989

EDWARD S. ROBB, JR.
CLERK

BRUEWER, J.

9-10-89
C.G.J. mail
calves
CA ✓
JL

This 4th day of August, 1989, this cause came on to be heard before a three judge panel consisting of Judge Henry J. Bruewer, William R. Stitsinger, and John R. Moser, on the remand of the Ohio Supreme Court, reported as State v. Davis (1988), 38 Ohio St. 3d 361, 373 "for a resentencing hearing solely for the purpose of determining whether the remaining aggravating circumstance outweighs the mitigating factors presented by (Defendant), beyond a reasonable doubt." The Court having unanimously found that the aggravating circumstance, of which the defendant was found guilty, outweighs the mitigating factors presented beyond a reasonable doubt, this opinion is made pursuant to Section 2929.03 (F), Ohio Revised Code

The aggravating circumstance in this case is that, prior to the aggravated murder at bar, the Defendant had been convicted of the offense of Second Degree Murder, an essential element of which was the purposeful killing of another, to-wit, the prior purposeful killing of his wife Ernestine Davis in 1970.

We find the following to be mitigating factors:

1) The Defendant adjusted well to prison routine and during his stay in prison, obtained a high school GED and an associate

J0044P388

-2-

IMAGED

degree in Business Administration, and studied for and worked as a dental technician.

2) There has always been a good family relationship between the Defendant and all members of his family, including his stepfather.

3) Since his release on parole, he has maintained at least partial employment.

FILED in Common Pleas Court

BUTLER COUNTY, OHIO

AUG 10 1989

EDWARD S. ROBB, JR.

CLERK

4) As testified by the psychologist, Defendant has a compulsory personality disorder or explosive disorder which may have contributed to the violence in this case.

All of these mitigating factors are considered to be under Section 2929.04 (B) (7), Ohio Revised Code.

We find that this aggravating circumstance outweighs the mitigating factors found by the panel by proof beyond a reasonable doubt, because the factors we find in mitigation are of slight weight. The Defendant's positive prison record, good family relationship, study and accomplishments in prison and employment while on parole were overwhelmingly counterbalanced and outweighed by the aggravating circumstance of his prior conviction for purposeful killing, demonstrating rather convincingly that a prior life sentence was no deterrent at all for this Defendant.

Defendant's explosive personality disorder, which we found may have contributed to the violence in the case at bar, may explain it but in no way excuses it, and is not of such a nature as would have any great mitigating effect. Nothing in the case indicates any verbal or physical confrontation with the victim prior to the killing which would either provoke Defendant or arouse in him a "heat of passion." Defendant's personality disorder perhaps explains

J0044P389

-3-

IMAGED

how he could commit unprovoked homicidal violence in the case at bar; however, this disorder did not affect the substantial capacity of the Defendant to appreciate the criminality of the crime he engaged in with prior calculation and design, or his substantial capacity to refrain from committing the offense, and indeed is such as would be had of numerous offenders, where the death sentence would not be mitigated. In sum, we have a very angry man who set out to kill his victim, having previously been convicted of a prior purposeful killing of another and having found no deterrence from committing the present offense in that prior conviction.

As we are required by Section 2929.04 (B), Ohio Revised Code, to consider the nature and circumstances of the offense, the history, character and background of the offender, and all of the factors in mitigation of the sentence of death presented herein, we find the aggravating circumstance, the Defendant's previous conviction of the prior purposeful killing of his wife in 1970, outweighs the mitigating circumstances beyond a reasonable doubt.

We, therefore, sentence the defendant to death by electrocution on December 4, 1989.

MOSER and STITSINGER, JJ. concur.


BRUEWER, J.


STITSINGER, J.


MOSER, J.

J0044P390

IMAGED

CAS9 09 0123

STATE OF OHIO
Appellee

v.

VON CLARK DAVIS
Appellant

FILED
IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

CLERK OF COURTS
EDWARD S. ROBB, JR.

Case No. Cr83-12-0614

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

SEP 6 1989

EDWARD S. ROBB, JR.
CLERK

FILED in Court of Appeals

BUTLER COUNTY, OHIO

SEP - 6 1989

EDWARD S. ROBB, JR.
CLERK

NOTICE OF APPEAL

Holcomb
CA
NC
Notice is hereby given that Von Clark Davis , defendant herein, appeals to the Court of Appeals of Butler County, Ohio, Twelfth Appellate District from his conviction and sentence of death imposed by this court and entered August 7, 1989.

Respectfully Submitted,
RANDALL M. DANA
Ohio Public Defender

David C. Stebbins

DAVID C. STEBBINS
Senior Assistant Public Defender
8 East Long Street
Columbus, Ohio 43215
(614) 466-5394

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoin Notice of Appeal was served by regular U.S. Mail on John F. Holcomb, Prosecuting Attorney for Butler County, Ohio, 216 Society Bank Building P.O. Box 515, Hamilton, Ohio 45012 this 5th day of September, 1989

①

144

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DATE 9-5-89

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CAS9 09 0123
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1 From (Your Name) Please Print: **David C. Stebbins** Your Phone Number (Very Important): **614-466-5354**

2 To (Recipient's Name) Please Print: **Edward S. Robb, Jr., Clerk** Recipient's Phone Number (Very Important):

Company: **OHIO PUBLIC DEFENDERS OFFICE** Department/Floor No: **6** Company: **Butler County Court of Appeals** Department/Floor No:

Street Address: **6 E LONG ST 11TH FL** Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. # Zip Codes): **101 High Street**

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Office of the Ohio Public Defender

8 East Long Street
Columbus, Ohio 43266-0587
(614) 466-5394
FAX NUMBER: (614) 644-9972

RANDALL M. DANA
State Public Defender

IMAGED

September 5, 1989

Edward S. Robb, Jr.
Clerk of Courts
101 High Street
Hamilton, Ohio 45011

Re: State v. Von Clark Davis

Dear Mr. Robb:

Enclosed please find the originals and four copies each of the MOTION FOR APPOINTMENT OF COUNSEL, NOTICE OF APPEAL, and DOCKET SHEET to be filed today in the above-referenced case. Please return the extra time-stamped copies to me in the enclosed postage-paid self-addressed envelope.

Your assistance in this matter is greatly appreciated.

Very truly yours,

A handwritten signature in blue ink, appearing to read "D. C. Stebbins".

David C. Stebbins
Senior Assistant Public Defender

DCS:bj
Enclosures

FEDERAL EXPRESS

DOCKET STATEMENT FORMS
CRIMINAL DOCKET STATEMENT

IMAGED

CAS9 09 0123

APPEAL NUMBER _____
TRIAL COURT NO. CR 83-12-0614
TRIAL JUDGE _____

CRIMINAL DOCKET STATEMENT
FORM I

STATE OF OHIO	JOHN F. HOLCOMB
	PROSECUTING ATTORNEY
	216 Society Bank Building
	P.O. Box 515
	Hamilton Ohio 45012
Plaintiff	
vs.	vs.
VON CLARK DAVIS	David C. Stebbins
	Senior Assistant Public Defender
	8 East Long Street
	Columbus, Ohio 43215
	(614) 466-5394
Defendant	Counsel

Was counsel appointed for trial? YES NO
Has counsel been appointed for appeal by trial court? YES NO
Will request for appointment of counsel be made to this Court? YES NO
Was Stay of Execution granted by trial court? YES NO
Offense convicted of: Aggravated Murder with specification
Length of Sentence: Death
Probable issues for review: ?

Will a transcript of proceedings be filed? YES NO
Is the complete or only a partial transcript ordered? Complete
Estimated length of transcript: _____
Time needed to complete transcript: _____
Time needed to file brief after transcript is filed: _____
List all related/pending appeals: _____

Identify any special problems anticipated with this appeal: This is the first case where a person has been sentenced to death after a second sentencing hearing

[Signature]
Counsel's Signature

IMAGED

CAS9 09 0223

IN THE COURT OF APPEALS
TWELFTH JUDICIAL DISTRICT
BUTLER COUNTY, OHIO
09 SEP 06 AM 11 12

STATE OF OHIO,
Appellee,

CLERK OF COURTS
EDWARD S. ROSS, JR.

-vs-

: Case No.

VON CLARK DAVIS,

:

Appellant.

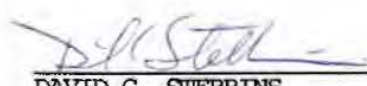
:

MOTION FOR APPOINTMENT OF COUNSEL

Now comes the Appellant, Von Clark Davis, and moves this Court for an order appointing the Ohio Public Defender Commission to represent him in his appeal from his sentence of death imposed by the Court of Common Pleas for Butler County on August 7, 1989. Appellant Davis is indigent and has been represented by appointed counsel since the inception of these proceedings in 1983. This is an appeal as of right to this Court. As such, Appellant Davis is entitled to the appointment of counsel to represent him in this appeal pursuant to the Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution. See Evitts v. Lucey (1985), 469 U.S. 387. The reasons in support of this motion are more fully set out in the attached affidavit.

Respectfully Submitted,

RANDALL M. DANA
Ohio Public Defender



DAVID C. STEBBINS
Senior Assistant Public Defender

CASE 00 0000
IMAGE

Ohio Public Defender Commission
8 East Long Street
Columbus, Ohio 43215
(614) 466-5394

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing MOTION FOR APPOINTMENT OF COUNSEL was served by regular U.S. Mail on John F. Holcomb, Prosecuting Attorney for Butler County, 216 Society Bank Building, P.O. Box 515, Hamilton, Ohio 45012, this 5th day of September, 1989.



DAVID C. STEBBINS
Senior Assistant Public Defender

COUNSEL FOR APPELLANT

CASS 09 C100

MAILED

AFFIDAVIT OF DAVID C. STEBBINS

County of Franklin :
: SS:
State of Ohio :

I David C. Stebbins, being first duly sworn, do depose and state that:

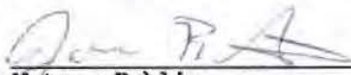
1. I am an attorney licensed to practice law in the State of Ohio;
2. I am employed as Senior Assistant Public Defender in charge of the Death Penalty Litigation Section of the Ohio Public Defenders Office;
3. This office presently represents 60 of the 96 persons under sentence of death in Ohio;
4. This office was contacted by John A. Garretson in the above captioned case and requested to take over representation of Von Clark Davis in his appeal from his sentence of death;
5. This office was subsequently contacted by Von Clark Davis and requested to take over representation in his appeal from his sentence of death;
6. This office has determined Mr. Davis to be indigent pursuant to Ohio Revised Code Section 120.05, based on the representations of prior counsel of prior determinations that Mr. Davis was indigent and the fact that he has been continuously incarcerated since 1983;
7. This office is willing to accept appointment to provide representation to Von Clark Davis for purposes of appealing his sentence of death imposed on August 7, 1989;

FURTHER, affiant sayeth naught.



David C. Stebbins

Sworn to and subscribed before me this 5th day of September, 1989.



Notary Public

JOHN M. ...

My Comm. Expires 09/01/2012

Form OPD-1026 (Rev. 8/88)

GARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

IN THE Common Pleas COURT
COUNTY OF Butler
CITY OF Hamilton

IMAGED

*89 SEP 13 AM 9 07

STATE OF OHIO

Case Number CR 83 12 0614

VS.

CLERK OF COURTS
EDWARD S. ROBB, JR.Judge s Bruewer, Moser, StitsingerVON CLARK DAVIS

Defendant

FILED in Common Pleas Court
BUTLER COUNTY, OHIO

**MOTION FOR APPROVAL OF PAYMENT OF
ASSIGNED COUNSEL FEES AND EXPENSES**

SEP 13 1989

EDWARD S. ROBB, JR.
CLERK

The undersigned having been previously appointed counsel for the defendant moves this Court for an order approving payment of fees and expenses as indicated in the attached itemized statement, pursuant to sections 2941.51 and 120.33 of the Revised Code.

As the assigned attorney of record for the defendant, I certify that I have received no compensation in connection with providing representation in this case other than that described in this application. I, or an attorney under my supervision, have performed all legal services itemized in this application. The amounts requested for legal fees and expenses are not duplicated on any other application for fees bearing this or any other case number.

As attorney of record, I was appointed on _____, 198____. The case terminated on August 7, 198⁹. I am submitting this application on August 14, 198⁹.

Respectfully submitted,

Signature

Name

JOHN A. GARRETSONType or Print A Legal Professional Association

Address

616 Dayton Street, P. O. Box 1166

Street

HamiltonOhio45012

City

State

Zip Code

Telephone (513) 863-6600 SSN [REDACTED]

APPLICATION			
OFFENSE DESCRIPTION, CLASSIFICATION AND DISPOSITION FOR EACH CHARGED OFFENSE			IMAGED
<p>The charges were disposed of in the following manner:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>1. <input type="checkbox"/> Jury trial</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found not guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Hung jury</p> <p style="margin-left: 20px;"><input type="checkbox"/> Guilty of a lesser included offense</p> </div> <div style="width: 45%;"> <p>3. <input type="checkbox"/> Dismissed</p> <p>4. <input type="checkbox"/> Plea</p> <p style="margin-left: 20px;"><input type="checkbox"/> To indictment</p> <p style="margin-left: 20px;"><input type="checkbox"/> To a lesser offense</p> </div> </div> <p>2. <input checked="" type="checkbox"/> Bench trial (Post-trial resentencing hearings)</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found not guilty</p>			
<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony <input type="checkbox"/> Aggravated Felony <input type="checkbox"/> Gun Specification <input checked="" type="checkbox"/> Death Penalty <input type="checkbox"/> Other			
OFFENSE	O.R.C. OR CITY CODE SECTION	DEGREE OF OFFENSE	DISPOSITION
1.			Death penalty
2.			
3.			
4.			
5.			
6.			
<p>SENTENCE: <u>death</u></p> <p>_____</p> <p>_____</p>			
<p>Have you or another attorney previously submitted a bill for partial payment for this case or case number? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Amount paid \$ _____</p>			
<p>Was the client in this case ordered to repay the court for all or a portion of the cost of your services? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Amount ordered to pay \$ _____</p>			
<p>How many motions were filed in this case? _____</p>			

Attach Continuation Request for Payment form if necessary. PLEASE STAPLE TO THIS SHEET.

CR83-12-0614

IMAGED

ENTRY

The Court finds that counsel performed the legal services set forth on the attached itemized Statement, and that the fees and expenses set forth on this Statement are reasonable, and are in accordance with the resolution of the Board of County Commissioners of Butler County, Ohio, relating to payment of assigned counsel.

IT IS THEREFORE ORDERED that counsel fees and expenses be, and are hereby approved, in the amount of \$50 —. It is further ordered that the said amount be, and hereby is, certified by the Court to the County Auditor for payment.

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

SEP 13 1987

EDWARD S. ROBB, JR.
CLERK

Henry J. Beuwer
Judge (Type or print)
H. J. Beuwer
John A. Garretson
Signature
JOHN A. GARRETSON
616 Dayton Street, P. O. Box 1166
Hamilton, Ohio 45012

CERTIFICATION

The County Auditor in executing this certification attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or the Auditor of State which reveals unallowable or excessive costs may result in future adjustments against reimbursement or repayment of audit exceptions to the Ohio Public Defender Commission.

County Number: _____

Check Number: _____

Check Date: _____

County Auditor (Type or print)_____
Signature

4

J00457844

Form OPD-1026 (Rev. 8/88)

ARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

IMAGED

IN THE COMMON PLEAS COURT
 COUNTY OF BUTLER
 CITY OF HAMILTON

89 SEP 13 AM 9 07

STATE OF OHIO Case Number CR83-12-0614
 VS. FILED In Common Pleas Court
CLERK OF COURTS BUTLER COUNTY, OHIO Judge Stitsinger & Moser
EDWARD S. ROBB, JR. SEP 13 1989
Von Clark Davis
 Defendant

**MOTION FOR APPROVAL OF PAYMENT OF
 ASSIGNED COUNSEL FEES AND EXPENSES**

The undersigned having been previously appointed counsel for the defendant moves this Court for an order approving payment of fees and expenses as indicated in the attached itemized statement, pursuant to sections 2941.51 and 120.33 of the Revised Code.

As the assigned attorney of record for the defendant, I certify that I have received no compensation in connection with providing representation in this case other than that described in this application. I, or an attorney under my supervision, have performed all legal services itemized in this application. The amounts requested for legal fees and expenses are not duplicated on any other application for fees bearing this or any other case number.

As attorney of record, I was appointed on _____, 198____. The case terminated on August 7, 198⁹. I am submitting this application on September 7, 198⁹.

Respectfully submitted,

Signature

Name Michael D. Shanks

Type or Print

Address 304 North Second Street

Street

Hamilton, Ohio 45011

City

State

Zip Code

Telephone (513) 863-2112SSN [REDACTED]

IMAGED

APPLICATION			
OFFENSE DESCRIPTION, CLASSIFICATION AND DISPOSITION FOR EACH CHARGED OFFENSE			
<p>The charges were disposed of in the following manner:</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>1. <input type="checkbox"/> Jury trial</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found not guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Hung jury</p> <p style="margin-left: 20px;"><input type="checkbox"/> Guilty of a lesser included offense</p> </div> <div style="width: 48%;"> <p>3. <input type="checkbox"/> Dismissed</p> <p>4. <input type="checkbox"/> Plea</p> <p style="margin-left: 20px;"><input type="checkbox"/> To indictment</p> <p style="margin-left: 20px;"><input type="checkbox"/> To a lesser offense</p> </div> </div> <p>2. <input checked="" type="checkbox"/> Bench trial Post-trial resentencing</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found guilty</p> <p style="margin-left: 20px;"><input type="checkbox"/> Found not guilty</p>			
<input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony <input type="checkbox"/> Aggravated Felony <input type="checkbox"/> Gun Specification <input checked="" type="checkbox"/> Death Penalty <input type="checkbox"/> Other			
OFFENSE	O.R.C. OR CITY CODE SECTION	DEGREE OF OFFENSE	DISPOSITION
1. Agg. Murder (with specs.)		1	Death
2.			
3.			
4.			
5.			
6.			
<p>SENTENCE: <u>Death</u></p> <p>_____</p> <p>_____</p>			
<p>Have you or another attorney previously submitted a bill for partial payment for this case or case number? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Amount paid \$ _____</p>			
<p>Was the client in this case ordered to repay the court for all or a portion of the cost of your services? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Amount ordered to pay \$ _____</p>			
<p>How many motions were filed in this case? <u>Six</u></p>			

Date of Service	OUT OF COURT HOURS							IN COURT HOURS						
	1 INTERVIEWING	2 INVESTIGATION	3 RESEARCH & WRITING	4 NEGOTIATION & CONFERENCES	5 TRAVEL	6 OUT OF COURT OTHER	TOTAL	7 PRE-TRIAL HEARINGS	8 TRIAL	9 PLEA HEARING	10 DISPOSITIONAL HEARING	11 POST-TRIAL HEARING	12 IN COURT OTHER	TOTAL
5/12/89				1.5			1.5							
5/13/89			.5				.5							
6/28/89	.5						.5							
6/29/89	2.0		1.0		3.0		6.0							
6/30/89			1.0				1.0							
7/31/89											.5		.5	
8/2/89			4.5				4.5							
8/3/89			2.0				2.0							
8/4/89	1.0			2.5			3.5				1.0		1.0	
8/7/89											1.0		1.0	
TOTAL HOURS	3.5		9.0	4.0	3.0		19.5				2.5		2.5	

15 MINS. = .25 HR. 30 MINS. = .50 HR., ETC.

LEGAL FEES: In-court hours 2.5 × In-court rate \$ 30.00 = Total in-court \$ 75.00
Out-of-court hours 19.5 × Out-of-court rate \$ 20.00 = Total out-of-court \$ 390.00
Total legal fees \$ 465.00

EXPENSES: Type of Expense Amount
\$

Travel expenses to Lucasville - (multiple) \$62.00

Extra ordinary fees -
total case death penalty 225.00

Total Expenses \$62.00

Total legal fees and expenses \$ 877.00

3

CR 53-12-0614

ENTRY

IMAGED

The Court finds that counsel performed the legal services set forth on the attached itemized Statement, and that the fees and expenses set forth on this Statement are reasonable, and are in accordance with the resolution of the Board of County Commissioners of Butler County, Ohio, relating to payment of assigned counsel.

IT IS THEREFORE ORDERED that counsel fees and expenses be, and are hereby approved, in the amount of \$827.00. It is further ordered that the said amount be, and hereby is, certified by the Court to the County Auditor for payment.

FILED In Common Pleas Court
BUTLER COUNTY, OHIO

SEP 13 1987

EDWARD S. ROBB, JR.
CLERK

Henry J. Brewer
Judge (Type or print)

H. J. Brewer
Signature

CERTIFICATION

The County Auditor in executing this certification attests to the accuracy of the figures contained herein. A subsequent audit by the Ohio Public Defender Commission and/or the Auditor of State which reveals unallowable or excessive costs may result in future adjustments against reimbursement or repayment of audit exceptions to the Ohio Public Defender Commission.

County Number: _____

Check Number: _____

Check Date: _____

County Auditor (Type or print)

Signature

J00450845

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☒ Show to whom delivered, date, and addressee's address. (Extra charge) 2. ☐ Restricted Delivery (Extra charge)

3. Article Addressed to: CR83 12 0614 CLERK OHIO SUPREME COURT COLUMBUS, OHIO 43215 Filed In Common Pleas Court BUTLER COUNTY, OHIO SEP 20 1989 28 EDWARD S. ROBB, JR. CLERK	4. Article Number: 53885
Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise	Always obtain signature of addressee or agent and <u>DATE DELIVERED</u> .
5. Signature — Address: X <i>R. Eators</i>	8. Addressee's Address (ONLY if requested and fee paid) STATE OFFICE TOWER 1. 30 E. BROAD ST. COLUMBUS, OH 43206
6. Signature — Agent: X	
7. Date of Delivery: AUG 11 1989	

PS Form 3811, Mar. 1988 • U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

Clk. 300-Q

BARRETT P ERS, PUBLISHERS, SPRINGFIELD, OHIO

ADD COST

Execution for Costs In Felony

IMAGED

Revised Code, Sec. 2949.15

The State of Ohio,.....BUTLER.....County.

Common Pleas Court

To the Sheriff of said County: BUTLER

You Are Hereby Commanded, That of the goods and chattels, and for want thereof, then of the lands and tenements of.....VON CLARK DAVIS.....

in your County, you cause to be made \$1,383.40 ADD COST.....

Dollars, being the amount of the costs of prosecution, which the State of Ohio, in our Court of Common Pleas, at a term thereof, commencing on the.....7TH.....day of.....AUGUST.....A. D. 19.....89.....by the judgment of said Court, recovered against the said.....VON CLARK DAVIS.....

whereof.....HE.....was convicted, as appears of record, with interest thereon from the first day of the term aforesaid; also that you cause to be made the costs of execution and increase costs that may accrue.

Hereof fail not, but of this writ and your proceedings endorsed hereon, make due return, within ten days from the date hereof.

WTTNESS my hand and the seal of said Court,

at.....HAMILTON.....Ohio, this

15TH.....day of.....AUGUST.....19 89



Clerk

By.....Barbara Dachs.....

Deputy

SHERIFF'S RETURN

Sheriff's Office,

Butler County, O.,

Aug 15 19 87

SHERIFF FEES	Dolls.	Cts.
Service and Return,	200	00
Mileage .. Miles	10	00
Administering Oath to Appraisers, each cts.		
Copies for Advertisements, words, per 100 words,		
Poundage, .. - - - -		
Levy, .. - - - -		
Total, .. - -	310	00
Appraiser Fees, .. - -		
Printer Fees, .. - -		

Received this writ on the

Aug 15 19 89 at 11:11 o'clock A.M.,
and pursuant to its command

IMAGED

Filed in Common Pleas Court
BUTLER COUNTY, OHIO

SEP 20 1989

EDWARD S. ROBB, JR.
CLERKRECEIVED
BUTLER COUNTY, OHIO
MICHAEL S. HOLZNER

89 AUG 15 11:11

I make return thereof. No goods or chattels, lands or tenements found,
whereon to levy.

Dated this 15 day of Aug 19 89

By

Sheriff

Deputy

No. CR83.12.0614

Crim. Doc. Page.

COMMON PLEAS COURT

BUTLER County, O.

THE STATE OF OHIO,

vs.

VON CLARK DAVIS

JOHN F. HOLCOMB

Prosecuting Attorney

Fi. Fa.—Execution for Cost

CASE OF FELONY

Issued 19

Returnable 19

Costs, - - - - \$

Int. from

Inc. Costs, - - - - \$

Ret'd and Filed 19

Clerk

By Deputy

BARRETT BROTHERS, PUBLISHERS. SPRINGFIELD, OHIO
83-8-3

IMAGED

CASE NO. CR83-12-0614

CA89-09-0123

TITLE OF CASE	ATTORNEYS	ACTION
THE STATE OF OHIO vs. VON CLARK DAVIS	John F. Holcomb John Garretson Mike Shanks	Butler County s.s., Court of Common Pleas: Indictment for: Aggravated Murder and Having Weapons under Disability

PLEADINGS FILED, WRITS ISSUED, WRITS RETURNED AND COPIES OF RETURNED

Transcript filed from Docket of Hamilton Municipal Court
(83-CRA-3565 & 83-CR-A3539)
Charge Aggravated Murder & Having Weapons
while under disability

Committed
Bond
Municipal Court Fees
Justice's Fees
Constables's Fees
Witness Fees

No Bond
\$37.00

\$6.30

FILED in Court of Appeals
BUTLER COUNTY, OHIO

OCT 3 - 1989

1984 Jan 06 On the 6th day of Jan. 1984 I served a certified copy
of the Summons in above entitled case upon the
defendant, by delivering Him Said Copy
R. R. Walton, Sheriff
R. Smith, Deputy

1984 May 28 On the 22nd day of May 1984 I served a certified copy
of Order/Exam in above entitled case upon the
Butler County Forensic Center
By Delivering to Him Said Copy
Sheriff
R. Smith Deputy

FILED
MAR 05 1991

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO
DATE OF:

FINDINGS, JUDGMENTS, ORDERS AND DECREES

1. 1983 Dec 22 Transcript, filed
2. 1983 Dec 22 J373 P430 Entry regarding bond, filed
3. 1984 Jan 06 Prosecutor's request for summons, filed Summons,
Copy of Indictment issued
4. 1984 Jan 06 Notice to Supreme Court of Ohio of filing Agg.
Murder with Specification, filed
5. 1984 Jan 06 Two copies of notice issued to Supreme Court
of Ohio by Certified Mail

continued

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IMAGED

CASE NO. CR83-12-0614

-2-

CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
6.	1984 Jan 11	Return Receipt of: Supreme Court of Ohio Signed: R. Eaton Date: 1-10-84
7.	1984 Jan 13	J374 P209 Defendant arraigned, Pleads not guilty
8.	1984 Jan 17	Motion to sever, filed
9.	1984 Jan 17	Motion for Bill of Particulars, filed
10.	1984 Jan 17	Motion for change of Venue, filed
11.	1984 Jan 17	Motion to view the scene, filed
12.	1984 Jan 17	Motion to dismiss and inspect Grand Jury Transcript, filed
13.	1984 Jan 20	Memorandum in opposition to motion to sever counts, filed
14.	1984 Jan 20	Memorandum in opposition to motion to dismiss and inspect transcript, filed
15.	1984 Jan 20	Memorandum in opposition to motion for change of venue, filed
16.	1984 Jan 26	J374 P761 Entry scheduling pre-trial hearing and continuing trial date for pre-trial motions 2-15-84m filed, Bruewer, J.
17.	1984 Jan 26	Memorandum in support of motion to sever, filed
18.	1984 Jan 26	Memorandum in support of motion for change of venue, filed
19.	1984 Feb 01	Praeipe for witness, filed
20.	1984 Feb 01	Subpoena issued
21.	1984 Feb 01	Praeipe for witness, filed
22.	1984 Feb 01	Subpoena issued
23.	1984 Feb 01	Praeipe for witness, filed
24.	1984 Feb 01	Subpoena issued
25.	1984 Feb 01	Motion and memorandum for discovery, filed
26.	1984 Feb 01	Motion and memorandum to Bifurcate trial- Motion in Limine, filed.
27.	1984 Feb 01	Motion to prohibit Death Qualification of the Jury and memorandum, filed
28.	1984 Feb 02	Praeipe for witness, filed
29.	1984 Feb 02	Subpoena issued
30.	1984 Feb 03	Memorandum in opposition to motion limine RE: Death Qualification of Jurors, filed
31.	1984 Feb 08	State's answer to Defendant's request for discovery, filed
32.	1984 Feb 08	Motion to provide discovery, filed
33.	1984 Feb 08	J375 P250 Order to provide discovery, filed, Bruewer, J.
34.	1984 Feb 09	Bill of Particulars, filed
35.	1984 Feb 13	Return Receipt of: Dick Perry, Cincinnati Post Signed: Glenn Blade Date: 2-7-84

continued

IMAGED

CASE NO. CR83-12-0614 -3- CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
36.	1984 Feb 13	Return Receipt of: Karla Stanley, WCPL Signed: G.R. Thomas Date:2-8-84
37.	1984 Feb 14	Motion to Appoint counsel, filed
38.	1984 Feb 14	Affidavit of Von Clark Davis, filed
39.	1984 Feb 14	J375 P435 Entry appointing M. Shanks as attorney, Bruewer, J.
40.	1984 Feb 14	J375 P435 Entry appointing John Garretson as attorney, Bruewer, J.
41.	1984 Feb 15	J375 P468 Certificate of witness fee for transportation, Moser, J.
42.	1984 Feb 24	J375 P808 Entry setting trial date of 5-9-84 Defendant having waived rights to speedy trial, and vacating 2-23-84 trial date, Bruewer, J.
43.	1984 Feb 24	J375 P810 Entry ordering special venire pursuant O.R.C. 2945.18; 75 jurors 8-7-84 and order for Sheriff's returns, Bruewer, J.
44.	1984 Feb 24	J375 P809 Entry ordering additional special venire pursuant O.R.C. 2945.19; 50 jurors, filed, Bruewer, J.
45.	1984 Mar 05	Return copy of notice to Supreme Court(CC84-4)
46.	1984 Mar 22	Return of venire, filed
47.	1984 Apr 20	J378 P223 Entry ordering additional special venire, Bruewer, J.
48.	1984 Apr 20	Supplemental discovery, filed
49.	1984 Apr 23	Praecipe for witness filed
50.	1984 Apr 23	Subpoena issued
51.	1984 Apr 25	Defendant's response to plaintiff's request for discovery, filed
52.	1984 Apr 26	Praecipe for witness files
53.	1984 Apr 26	Subpoena issued
54.	1984 Apr 26	Amended response to plaintiff's request for discovery, filed
55.	1984 Apr 27	Supplemental discovery, filed
56.	1984 Apr 27	Praecipe for witness, filed
57.	1984 Apr 27	Subpoena issued
58.	1984 Apr 27	Election of defendant pursuant Section 2929.022 O.R.C. Concerning the specification of Aggravating circumstances, and to have motion in limine to preclude prosecution's introduction of evidence or comment of defendant's prior conviction and to sever counts of indictment, filed
59.	1984 Apr 27	Motion to have reasons for defense objections placed on record, filed
60.	1984 Apr 27	Motion for notice of prospective three judge panel, filed
61.	1984 Apr 27	Motion for ruling on number of premetory challenges, filed

continued

IMAGED

CASE NO. CR83-12-0614

-4-

CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
62.	1984 Apr 27	Motion to record all proceedings, filed
63.	1984 Apr 27	Motion for pre-trial hearing, filed
64.	1984 Apr 27	Motion to increase the burden of proof to beyond all doubt, filed
65.	1984 Apr 27	Motion for pretrial disclosure of prosecuting witnesses written or recorded statements, filed
66.	1984 Apr 27	Motion to compel prosecutor to disclose death penalty data filed
67.	1984 Apr 27	Motion to compel disclosure of prosecuting attorney's jury selection data
68.	1984 Apr 27	Motion to require prosecutor to state reason for exercising prematory challenges, filed
69.	1984 Apr 27	Motion for leave to file additional motions and for leave to supplement the memoranda in support of motions already filed
70.	1984 Apr 27	Motion for all motions to heard on the record, filed
71.	1984 Apr 27	Motion for sequestration of jurors for duration of trial, filed
72.	1984 Apr 27	Further motion to prohibit death qualification of jury in the alternative to seal separate juries during the guilt and penalty phases of trial and supplemental memorandum thereon, filed
73.	1984 Apr 27	Further memorandum in support of disclosure of Grand Jury testimony, filed
74.	1984 Apr 27	Motion for individual sequestered voir dire, filed
75.	1984 Apr 27	Motion to insulate the venire and jury, filed
76.	1984 Apr 27	Motion to dismiss, filed
77.	1984 Apr 30	Praecipe for witness, filed
78.	1984 Apr 30	Subpoena issued
79.	1984 Apr 30	Motion in limine, filed
80.	1984 Apr 30	Motion for expert services, Dr. Roger Fisher, filed
81.	1984 Apr 30	J378 P580 Order for exam and Pmt. pursuant Chapter 120, Bruewer, J.
82.	1984 Apr 30	Motion and memorandum for order releasing records, filed
83.	1984 May 01	State's memorandum in response to motions of defendant, filed on April 27, 1984, filed
84.	1984 May 03	Motion for appointment of Psychologist or Psychiatrist from Butler County Forensic center and to remove Dr. Roger Fisher from participation in case, filed
85.	1984 May 03	Motion to strike entry filed ex parte 4-30-84, for appointment of Roger H. Fisher and for clarification of his employment capacity by defendant, field

continued

IMAGED

CASE NO. CR83-12-0614

-5-

CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
86.	1984 May 04	Praeipe for witness, filed
87.	1984 May 04	Subpoena issued
88.	1984 May 04	J378 P794 Entry of rulings on defendant motions, filed, Bruewer, J.
89.	1984 May 04	J378 P793 Waiver and election of judge determination of aggravated specification, filed, Bruewer, J.
90.	1984 May 08	J378 P909 Jury waiver and election of three judge panel, filed, Bruewer, J.
91.	1984 May 08	Praeipe for witness, filed
92.	1984 May 08	Subpoena issued
93.	1984 May 09	J379 P0007 Motion and entry appointing Vernon Lyons as process server, Moser, J.
94.	1984 May 09	J370 P0009 Entry designating three judge panel, Black, J.
95.	1984 May 09	Praeipe for witness filed
96.	1984 May 09	Subpoena issued
97.	1984 May 10	J379 P0060 Motion and entry appointing Vernon Lyons, filed, Bruewer, J.
98.	1984 May 10	J379 P0062 Clerk's transcript fee for indigent defendant, filed, issued
99.	1984 May 10	J379 P0088 Certificate transportation cost, Bruewer, J.
100.	1984 May 14	Return Receipt of: Mr. Steven Dix Signed: Bernadine Durley Date: 5-7-84
101.	1984 May 14	Praeipe for witness filed
102.	1984 May 14	Subpoena issued
103.	1984 May 16	J379 P260 Entry of findings, guilty (count one) aggravated murder, guilty as to specification I of count one (prior murder) guilty as to specification II (firearm) and guilty as to having weapon under disability (count 2), Bruewer, J, Stitsinger, J, Moser, J.
103A	1984 Jun 22	J379 P503 Entry ordering presentence investigation and psychiatric exam for mitigation in imposing death penalty to be provided by 5-24-84, filed, Bruewer, J., Stitsinger, J., Moser, J.
104.	1984 May 25	Praeipe for witness, filed
105.	1984 May 25	Subpoena issued
106.	1984 Jun 04	J379 P828 Judgment conviction entry sentencing defendant to be conveyed within 30 days to Southern Ohio Correctional Facility as Lucas Hills and that on the first day of October 1984 defendant shall be electrocuted until dead by the Warden or deputy warden of said facility and further ordered as to sentence upon the second specification a term of actual incarceration of 3 years pursuant Section 2929.71 O.R.C. to served prior and consecutively with any other term of imprisonment imposed herein and further confined at S.O.C.F. for definite term of 1½ yrs. and pay cost, Judge panel

IMAGED

CASE NO. CR83-12-0614

-6-

CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
107.	1984 Jun 11	J380 P117 Opinion, filed, Bruewer, J., Stitsinger, J., Moser, J.,
108.	1984 Jun 11	J380 P118 Notice to Supreme Court of Ohio of sentencing as to death penalty imposition, filed, issued to Supreme Court of Ohio and Court of Appeals
109.	1984 Jun 12	J380 P154 Entry appointing Jack Garretson, Attorney filed, Bruewer, J.
110.	1984 Jun 12	J380 P155 Certificate of attorney fees, filed Bruewer, J.
111.	1984 Jun 13	Return Receipt of: Supreme Court of Ohio Signed: R. Eaton Date: 6-7-84
112.	1984 Jun 18	Notice of Appeal, filed, CA84-06-0070
113.	1984 Aug 01	Motion for transcript at State expense, filed
114.	1984 Aug 01	J383 P0003 Entry ordering transcript at State expense, filed, Bruewer, J.
115.	1984 Aug 16	Motion for stay of execution date, filed
116.	1984 Aug 16	J383 P473 Entry granting stay of execution date, filed, Bruewer, J.
	1984 Aug 16	Copy issued to S.O.C.F. record clerk by certified mail and attorneys.
	1984 Aug 16	Copy to Court of Appeals, Supreme Court of Ohio by certified
	1984 Aug 20	Return Receipt of: Wallace E. Stein - Record Clerk Signed: Wallace E. Stein Date: 8-17-84
	1984 Aug 20	Return Receipt of: Thomas L. Startzman Signed: R. Eaton Date: 8-17-84
117.	1984 Sep 25	J383 P840,843 Entry for payment of transcript of trial proceedings, filed, Bruewer, J.
118.	1984 Sep 26	J383 P841,842 Certificate of transcript fee for indigent
	1986 May 27	Mandate, filed - CA84-06-0070
119.	1986 May 27	Separate opinion/2929.05(A), filed
120.	1988 Sep 29	(Sep 14, 1986) Mandate-remanding
121.	1988 Sep 29	J31 P210,211 Judgment-reversing and remanding death sentence and affirming judgment conviction, Thomas J. Moyer-Chief Justice
122.	1988 Sep 29	Defendant's motion to return defendant for sentencing and memorandum filed
123.	1988 Oct 05	J31 P476 Entry ordering new hearing on 10-14-88 at 9:00 a.m. and ordering release to custody of Butler County Sheriff from Lucasville, OH Penal Institute to attend hearing filed, Moser, J.
124.	1988 Nov 04	J33 P0076 Entry ordering defendant's convey to S.O.C.F., Bruewer, J.
125.	1989 Jan 19	Motion for scheduling of date for sentencing hearing before a three judge panel.
126.	1989 Feb 06	J36 P663 Entry ordering hearing before Judges Bruewer, Stitsinger and Moser, 2-24-89 at 8:45 a.m.

continued

IMAGED

CASE NO. CR83-12-0614

-7-

CA89-09-0123

NO.	DATE OF:	FINDINGS, JUDGMENTS, ORDERS AND DECREES
127.	1989 Feb 10	J37 P0032-35 Certificate of attorney fees, Bruewer, J. (\$2,670.25)
128.	1989 May 09	Motion to extend time to file pre-trial motions and motion to continue sentencing mitigation hearing, filed
	1989 Jun 05	Notice of hearing date, (Moser, Stitsinger and Bruewer) August 04, 1989
129.	1989 Jun 28	J42 P214 Entry attointing John Garretson; Mike Shanks and Time Evans as counsel, filed Stitsinger, J.
130.	1989 Jun 29	Withdrawl of jury waiver
131.	1989 Jun 29	Motion for life sentence, filed.
132.	1989 Jun 29	Motion to withdraw jury waiver
133.	1989 Jul 21	Motion to strike defendant's withdrawl of jury waiver and memorandum
134.	1989 Jul 21	Motion for further psychological evaluation, appointment of a social worker to prepare a social history and for payment of extra-ordinary expenses for said experts
135.	1989 Jul 21	Motion to prohibit three judge panel from resentencing to death and motion to disqualify panel
	1989 Jul 25	Return Receipt on subpoena for: Sgt. Gordy Pullman Signed: Gordy Pullman Date: 7-21-89
	1989 Jul 25	Return Receipt on subpoena for: Oscar McGraw Signed: Oscar McGraw Date: 7-21-89
	1989 Jul 25	Return Receipt on subpoena: Herb Wendler Signed: Erwin Wendler Date: 7-25-89
136.	1989 Jul 24	J43 P534 Order-transport to hearing (on remand) Bruewer, J.
137.	1989 Jul 24	Motion to renew tretial motions
138.	1989 Jul 24	Motion to permit defense to admit all relevant evidence at the sentencing pleas
139.	1989 Jul 26	Memorandum in opposition to motion to prohibit three judge panel from re-sentencing to death and disqualify panel
140.	1989 Jul 26	J43 P664 Entry appointing Judge Bruewer to serve in the general division (trial division) in accordance with Rules of Court, Stitsinger, J.
141.	1989 Aug 01	J44 P0031 Entry as to motions heard 7-21-89, filed, Bruewer, J., Stitsinger, J., Moser, J.
	1989 Aug 04	Return Receipt: Capt. Oscar McGraw Signed: Oscar McGraw Date: 7-27-89
	1989 Aug 04	Return Receipt: Herb Wendler Signed: Erwin Wendler Date: 7-27-89
	1989 Aug 04	Return Receipt: Sgt. Gordy Signed: Gordon Pullman Date: 7-27-89
142.	1989 Aug 07	J44 P230 Judgment Conviction entry-findings that affravating circumstances outweigh the mitigating factor by a proof beyond a reasonable doubt and sentence-to death(count one) and; order to the clerk to issued writ, Judge panel

IMAGED

CASE NO. CR83-12-0614 -8- CA89-09-0123

NO. DATE OF: FINDINGS, JUDGMENTS, ORDERS AND DECREES

143. 1989 Aug 10 Opinion - J44 P388 (Finding that mitigating
factors outweighed by the circumstances).
144. 1989 Sep 06 Notice of Appeal - CA89-09-0123

COMPLETE

CR83 12 0614

COMMON PLEAS COURT OF BUTLER COUNTY, OHIO

CR. NAL APPEARANCE AND EXECUT V DOCKET

(Page 1)

IMAGED

TITLE OF CASE		ATTORNEYS	THE STATE OF OHIO
THE STATE OF OHIO			Common Pleas Court
VS			Butler County, ss.
VON CLARK DAVIS			Information for:
			AGGRAVATED MURDER
		SUPREME CT # 90-2524	Found and Filed 12/22/83
Pleadings Filed, Writs Issued, Writs Returned and Copies of Return			
Transcript filed from :			
Charged with		SPECEN,	
Arrest or served date :		AGGRAVATED MURDER WITH	
Bond amount set at :		\$0.00	
Municipal court fees :		\$0.00	
Constable fees :		\$0.00	
Witness fees :		\$0.00	
Date of	Page	Findings, Judgments, Orders and Decrees	
05/27/86		MEMO :NUNC PRO TUNC ENTRY TO THIS DATE FILED 5/7/90	
04/10/90		PLEASE SEE DOCKET FOR PREVIOUS FILINGS	
05/07/90		APPOINTMENT OF ATTORNEY FOR INDIGENT DEFENDANT	2.00
		(NUNC PRO TUNC 5/27/86), BROEWER, J.	
		Journal 00026 Page 00042	
10/29/90		MANDATE FILED AFFIRMING C889 09 0123	2.00
03/30/92		[Clerk's memo] : SUPREME CT.OH upheld (affirmed	
		12th District Decision) for DEATH PENALTY	
		C889 09 0123	
		S.C.OH.# 90-2524	
03/31/92		[Clerk's memo] :	
		COPY OF SUPREME CT OF OH MANDATE AFFIRMING &	
		UPHOLDING DEATH PENALTY FILED,	
		COPIES TO Grace White for issuance of Death Warrant	
		& certified copy of Mandate to institution/	
		&	
		copy to trial court file/CA-Midd & Moser, J	
04/08/92		ALL PAPERS RETURN FROM SUPREME COURT OF OH	
05/19/92		[Clerk's memo] : DATE OF SCHEDULED EXECUTION	
TOTAL			4.00

CR83-12-0614 CA 89-09-123
State, Plaintiff-Appell
vs.
Von Clark Davis, Defendant-Appell

The record in the above cause has been completed and filed in the
Court of Appeals on 11-17-89

cc:

EDWARD S. ROBB, JR.
Clerk of Courts
Butler County, Ohio

Date: 11-17-89

CC-126-L

PRINTED BY AMERICAN



Butler

Mary

VS.

vs.
Von Clark Davis

BARRETT BROTHERS, PUBLISHERS, SPRINGFIELD, OHIO

VON CLARK DAVIS v. WARDEN
CASE NO. 2:16-cv-00495
APPENDIX - Page 1174

POST OFFICE TO ADDRESSEE		EXPRESS MAIL NEXT DAY SERVICE		IMAGED	
ORIGIN		Date In:	Postage	NB 085 940 877	
Post Office ZIP Code:	Time In: <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Return Receipt \$			
Initials of Receiving Clerk:	Weight: lbs. oz.	C.O.D. \$			
ACCEPTANCE <input checked="" type="checkbox"/> Next Day Delivery or <input type="checkbox"/> Second Day Delivery <input checked="" type="checkbox"/> By 12 Noon or <input type="checkbox"/> By 3:00 P.M. <input type="checkbox"/> Express Mail Military Service <input type="checkbox"/> International Express Mail Country Code _____			Total Postage & Fees \$		
Express Mail Corporate Account No.:		Federal Agency Account No.:			
FROM: Mr. Edward S. Robb, Jr Butler Co. Clerk of Courts 101 High St. Hamilton, Ohio 45011					
TO: Telephone Number: _____ Southern Ohio Correctional Fac. ATTN: Warden Lucasville, Ohio 43420					
Waiver of Signature and Indemnity (Domestic Only) SIGNED _____					
CUSTOMER RECEIPT TO: Telephone Number: _____ Southern Ohio Correctional Fac. ATTN: Warden Lucasville, Ohio 43420					

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ORIGIN		Date In:	Postage	NB 085 940 888	
Post Office ZIP Code:	Time In: <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	Return Receipt \$			
Initials of Receiving Clerk:	Weight: lbs. oz.	C.O.D. \$			
ACCEPTANCE <input checked="" type="checkbox"/> Next Day Delivery or <input type="checkbox"/> Second Day Delivery <input type="checkbox"/> By 12 Noon or <input type="checkbox"/> By 3:00 P.M. <input type="checkbox"/> Express Mail Military Service <input type="checkbox"/> International Express Mail Country Code _____			Total Postage & Fees \$		
Express Mail Corporate Account No.:		Federal Agency Account No.:			
FROM: Mr. Edward S. Robb, Jr Butler Co. Clerk of Courts 101 High St. Hamilton, Ohio 45011					
TO: Telephone Number: _____ David Stebbins Sr. Asst. Public Defender 8 E. Long St. Columbus, Ohio 43215					
Waiver of Signature and Indemnity (Domestic Only) SIGNED _____					
CUSTOMER RECEIPT TO: Telephone Number: _____ David Stebbins Sr. Asst. Public Defender 8 E. Long St. Columbus, Ohio 43215					

Label 11-B (July 1988)

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CERTIFICATE OF MAILING
EDWARD S. ROBB, JR.
Received From:
CLERK OF COURTS
BUTLER COUNTY COURTHOUSE
HAMILTON, OHIO 45011

CASE NO. 0123
DAVID STEBBINS
B EAST LONG ST
COL. OH 43215

FEB 9 1990
HAMILTON, OH
CLERK OF COURTS
EDWARD S. ROBB, JR.
CLERK

U.S. POSTAL SERVICE
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CLERK OF COMMONWEALTHS COURT
CINDY CARPENTER

COURT OF COMMON PLEAS

BUTLER COUNTY, OHIO

STATE OF OHIO

Case No. CR83-12-0614

Plaintiff **FILED in Common Pleas Court**
BUTLER COUNTY, OHIO

vs.

VON CLARK DAVIS

MAY 7 1990

Defendant

EDWARD S. ROBB, JR.
CLERK

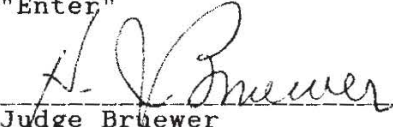
ENTRY APPOINTING COUNSEL
(NUNC PRO TUNC)

* * * * *

Upon application and for good cause shown, the Court hereby finds that the Defendant herein, Von Clark Davis, is indigent and unable to secure an attorney for his appeal to The Supreme Court of Ohio, and further finds that said Defendant is unable to pay the expenses of his appeal, and

It is hereby the ORDER of the Court that Timothy R. Evans be appointed as counsel of record for Defendant in his appeal to The Supreme Court of Ohio, nunc pro tunc - May 27, 1986.

"Enter"


Judge Bruewer

HOLBROCK & JONSON
LAW FIRM
HOLBROCK-JONSON
BUILDING
315 S. MONUMENT AVENUE
P. O. BOX 687
HAMILTON, OHIO 45012

J26 p42